

Business Combinations

Expansionary Activities

Comptroller's Corporate Manual

Washington, DC
April 1998

<u>Introduction</u>	1
<u>Background</u>	1
<u>Definitions</u>	1
<u>Applicability</u>	5
<u>Key Policies</u>	6
<u>General</u>	6
<u>Decision Criteria</u>	6
<u>Common Types of Combinations</u>	7
<u>Affiliated Combinations</u>	7
<u>Nonaffiliated Combinations</u>	7
<u>Specific Combinations</u>	7
<u>Intrastate Combinations</u>	7
<u>Interstate Combinations</u>	8
<u>Bank and Thrift Combinations</u>	11
<u>Reverse Triangular Mergers</u>	12
<u>Interim Bank Combinations</u>	12
<u>Summary of Process</u>	15
<u>Prefiling Discussions</u>	15
<u>Expedited Review</u>	15
<u>Streamlined Applications</u>	15
<u>Public Involvement and Notice</u>	16
<u>Competitive Factors</u>	18
<u>Rapid Growth Considerations</u>	19
<u>Filing the Application</u>	19
<u>OCC Review</u>	19
<u>Examinations and Investigations</u>	19
<u>OCC Decision</u>	20
<u>Consummation</u>	20
<u>Extensions</u>	20
<u>Appeals</u>	21
<u>Emergency Combinations</u>	21
<u>Failure Acquisitions</u>	22
<u>Specific Requirements</u>	23
<u>Accounting</u>	23
<u>Agreements</u>	25
<u>Assumption of Liabilities</u>	26
<u>Bank Name</u>	26
<u>Branch and Trade Names</u>	26
<u>Branch Closings</u>	27
<u>Combinations Involving Nonbank Affiliates and</u>	
<u>Bank Operating Subsidiaries</u>	27
<u>Community Reinvestment Act</u>	30
<u>Confidentiality</u>	31

<u>Convenience and Needs</u>	32
<u>Conversion from Full Service to Limited Charter</u>	32
<u>Conversion to a National Bank</u>	32
<u>Department of Justice Review</u>	32
<u>Directors' Residency and Citizenship Requirements</u>	34
<u>Divestitures</u>	34
<u>Legal Lending Limit Calculation</u>	34
<u>Liquidation Account</u>	34
<u>Main Office Designation</u>	35
<u>Meetings and Hearings</u>	35
<u>Nonconforming Assets and Activities</u>	36
<u>Oath of New Directors</u>	36
<u>OCC Assessments</u>	36
<u>Other Legal Considerations</u>	37
<u>Resulting Bank Charter Number</u>	37
<u>Shareholder Considerations</u>	37
<u>State Law Changes</u>	39
<u>Systems Integration Considerations</u>	39
<u>Year 2000 Considerations</u>	40
<u>Undercapitalized Banks</u>	42
<u>Uninsured Depository Institutions</u>	42
<u>Specific Filing Requirements</u>	43
<u>Bank Merger Competitive Review Process</u>	43
<u>Branch and Subsidiary Authorization</u>	47
<u>Fiduciary Powers</u>	48
<u>Investment in Bank Premises</u>	48
<u>Documents</u>	49
<u>Business Combination Application Checklist</u>	
<u>Community Reinvestment Commitments and</u>	
<u>Competitive Factors — Removal from Expedited Questions</u>	49
<u>Business Combination Application — Streamlined</u>	51
<u>Interagency Bank Merger Act Application</u>	57
<u>Pro Forma Combined Balance Sheet</u>	63
<u>Projected Regulatory Capital Schedule</u>	65
<u>Branches Requiring Authorization</u>	66
<u>Bank Merger Screen</u>	67
<u>Application: Interim National Bank Charter</u>	76
<u>Stock Payment Certificate and Oaths of Directors and Officers</u>	78
<u>Shareholders' Waiver of Notice of Shareholders' Meeting</u>	
<u>and Written Consent of Business Combination</u>	80
<u>Board of Directors' Waiver of Notice of Board Meeting and</u>	
<u>Written Consent of Business Combination</u>	81
<u>Emergency Processing Request</u>	82
<u>Notice of Consummation</u>	83
<u>Notice of Shareholders' Meeting to Vote on</u>	
<u>Combination</u>	84

<u>Instructions and Sample Public Notice</u>	85
<u>Secretary's Certificate of Board of Directors' Approval of Combination</u>	88
<u>Secretary's Certificate of Shareholders' Approval of Combination</u>	89
<u>Procedures</u>	91
<u>References</u>	103
<u>Appendixes</u>	107
<u>Sample Agreements — Consolidation</u>	107
<u>Sample Agreements — Merger</u>	113
<u>Sample Agreements — Purchase and Assumption</u>	120
<u>Expedited Review and Streamlined Application Eligibility Criteria (Diagram)</u>	124

This booklet provides detailed guidance, instructions, and procedures for business combinations involving affiliated and nonaffiliated institutions. Business combinations include mergers, consolidations, acquisitions, and other forms of combinations of depository institutions.

Applicants also should refer to the "[General Policies and Procedures](#)" (GPP) booklet for discussion of general filing instructions and procedures and the "[Public Involvement](#)" booklet for discussion, guidance, and procedures on the public notice and public hearing processes, and, particularly, on the handling of CRA protests. Applicants also may need to refer to other booklets of the *Comptroller's Corporate Manual* for additional discussion, instructions, and procedures relating to how the Comptroller of the Currency (OCC) processes relevant applications (e.g., "[Branches and Relocations](#)," "[Branch Closings](#)," "[Corporate Organization](#)," and "[Investment in Subsidiaries and Equities](#)").

Background

The Comptroller of the Currency (OCC) must approve any business combination resulting in a national bank. This booklet describes the policies and procedures the OCC uses to implement the various statutory and regulatory requirements governing business combinations involving national banks. Recently, the OCC amended its corporate regulations under 12 CFR 5, including the business combinations section (12 CFR 5.33), to update, provide clarity, and reduce unnecessary regulatory costs and burdens in the corporate process. This booklet also incorporates the new standards and requirements of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act) that apply when a national bank combines with a depository institution in a state other than the national bank's home state.

Definitions

The **applicant** refers to either the acquiring or target depository institutions.

Appropriate district office means: (1) Bank Organization and Structure (BOS) for all national bank subsidiaries of certain holding companies assigned to the Washington, D.C. licensing unit; (2) the appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office licensing unit; (3) the OCC's district office in which the national bank's supervisory office is located for all other banks; or (4) the OCC's International Banking and Finance Department (IB&F) for federal branches and agencies of foreign banks.

Business combination means a merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank; the acquisition by a national bank of all, or substantially all, of the assets of another depository institution; or the assumption by a national bank of deposit liabilities of another depository institution.

A **business reorganization** means either:

- (i) a business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company, or that will be controlled by the same holding company prior to the date of the combination,¹ or
- (ii) a business combination between an eligible bank and an interim bank chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank for those of a newly formed holding company and receives, after the transaction, substantially the same proportional share interest in the holding company as it held in the eligible bank (except for changes in interest resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank.²

Consolidation, under 12 USC 215 and 1828(c), refers to the combination of existing depository institutions into a new entity under a national bank charter, or under the charter of an existing national bank, when at least one institution is a national bank. Shareholders of the consolidating institutions surrender their equity in return for either equity in the consolidated bank or another form of consideration. Shareholders of the consolidating depository institutions must approve the transaction under 12 USC 215, which provides dissenter's rights to shareholders of all consolidating institutions.

¹Bank mergers, consolidations, or asset purchases that occur on the same day as, but after holding company mergers, consolidations, or asset purchases do not qualify as business reorganizations. However, they are still considered affiliated transactions. Unless the transaction is a qualifying business combination, the applicant must submit a standard application, and the transaction will not be eligible for expedited review. If the business combination application involves a holding company merger, in which a waiver has been requested from the Federal Reserve, or the holding company expects to file a 10-day notice with the Federal Reserve, the national bank applicant must submit a competitive analysis with the application (see Affiliated Combinations discussion on page 7).

²A business combination involving a merger with an interim bank to eliminate minority shareholders (i.e., "freeze out" transaction) does not meet the definition of a business reorganization.

A **depository institution** is any bank or savings association.

An **eligible bank** is a national bank that:

- Has a composite CAMELS rating of 1 or 2.
- Has an "outstanding" or "satisfactory" Community Reinvestment Act (CRA) rating. (This factor does not apply to an uninsured bank or branch or a special purpose bank covered by 12 CFR 25.11(c)(3).
- Is well capitalized as defined at 12 CFR 6.4(b)(1).
- Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive or, if subject to any such order, agreement or directive, is informed in writing by the OCC that the bank may be treated as an "eligible bank."

An **eligible depository institution** means a state bank or a federal or state savings association that is FDIC-insured and that meets the eligible bank criteria.

The **Herfindahl-Hirschman Index (HHI)** is a statistical measure of market concentration. It is used as the principal measure of market concentration in the Merger Screen. The HHI for a given market is calculated by squaring each individual competitor's share of total deposits within the market and summing the squared market share products. The more concentrated a specific market becomes the higher the HHI. For example, for a market with four competitors with equal market shares, the HHI would be: $25^2 + 25^2 + 25^2 + 25^2 = 2,500$; however, for a market with two banks having 40 percent of the deposits and two banks having 10 percent of the deposits, the HHI would be: $40^2 + 40^2 + 10^2 + 10^2 = 3,400$. For a more concentrated market with one bank having 60 percent of the deposits and two banks having 20 percent of the deposits, the HHI would be: $60^2 + 20^2 + 20^2 = 4,400$.

Home state, as applied to a national bank under the Riegle-Neal Act, is the state in which the main office of the bank is located. For a state bank, it is the state by which the bank is chartered.

Host state, as applied to both a national and a state bank under the Riegle-Neal Act, is any state other than its home state, in which the bank maintains, or seeks to establish and maintain, a branch (or branches).

An **interim bank** is a national bank that does not operate independently, but exists solely as a vehicle to accomplish a business combination.

Merger, under 12 USC 215, 215a, 215c, 1828(c), and 12 CFR 5.33, generally refers to the merging of one or more depository institutions into an existing national bank or interim national bank. The shareholders of the target institution surrender their equity in return for either equity in the acquiring bank or another form of consideration. Shareholders of the merging depository institutions must approve the transaction under either 12 USC 215 or 215a. However, 215a only provides dissenter's rights for shareholders of the target institution(s). Therefore, under the latter statute, shareholders of the acquiring national bank do not have dissenter's rights.

The **Merger Screen** is a screening device based on the HHI used primarily by the OCC and the DOJ to identify quickly proposed business combinations that do not present anticompetitive concerns. The screen also includes a description of the DOJ's antitrust review process. The applicant for a nonaffiliated business combination should submit the Merger Screen.

Purchase and assumption (P&A), under 12 USC 1828(c), refers to a bank's acquisition of the assets of, or assumption of liability to pay any deposits made in a target depository institution. Shareholders of the acquiring bank are not required by law to approve the transaction. If the target is a national bank, its shareholders must approve the transaction under 12 USC 181 when it will go into liquidation after the purchase and assumption. (In an emergency, OCC may waive the shareholder vote under 12 USC 181.) Shareholders of participating institutions do not have dissenter's rights in this type of transaction.

A **qualifying business combination** is a transaction that satisfies one of the following standards:

- (i) At least one party to the transaction is an eligible bank, and all other parties to the transaction are eligible banks or eligible depository institutions; the resulting national bank will be well capitalized immediately following consummation of the transaction; and the total assets of the target institution[s] are no more than 50 percent of the total assets of the acquiring bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application;
- (ii) The acquiring bank is an eligible bank; the target bank is not an eligible bank or an eligible depository institution; the resulting national bank will be well capitalized immediately following consummation of the transaction; and the applicants in a prefiling communication request

and obtain approval from the appropriate district office to use the streamlined application;³ or

(iii) The acquiring bank is an eligible bank; the target bank is not an eligible bank or an eligible depository institution; the resulting bank will be well capitalized immediately following consummation of the transaction; and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

An **undercapitalized bank** is an FDIC-insured depository institution that meets the criteria established in 12 CFR 6.4(b)(3), (4), or (5), for an undercapitalized, significantly undercapitalized, or critically undercapitalized bank, respectively.

Applicability

The OCC must review a business combination (combination) that results in a national bank. The applicant determines the structure of the combination (i.e., merger, consolidation or purchase and assumption), based on business or tax considerations. Combinations may occur between banks and between banks and other depository institutions, such as federal savings associations. Applicants must determine compliance with all applicable statutes and regulations. Applicants must provide accurate, fully developed facts in the application, so that the OCC may determine that the proposed business combination is consistent with applicable law and regulations.

The OCC and the other banking agencies have adopted an "Interagency Bank Merger Act (BMA) Application," that a national bank applicant can use to apply to the OCC for any transaction involving a business combination. The OCC also has an expedited review process available for certain business combinations. An applicant involved in a transaction that qualifies for expedited review also can file a streamlined business combination application. (See the discussions on expedited review and streamlined application that follow under the Summary of Process heading. Both the interagency and the streamlined applications are located in the Documents section of this booklet.)

³Expedited review and use of the streamlined business combination application under this standard are not available for a transaction that fails the size test in standard (i). Expedited processing also is not available under this standard or standard (iii) for a transaction in which the target institution has a CRA rating of less than satisfactory institution-wide, or in a state or multistate Metropolitan Statistical Area (MSA), or the performance of either the acquiror or the target is less than satisfactory in any MSA or in the non-MSA portion of a state, in which the acquiring bank seeks to expand through the business combination.

Key Policies

General

The OCC strives to preserve the soundness of the national banking system and to promote market structures conducive to competition and responsive to community needs. Normally, the OCC will approve a combination that would not have a substantially adverse effect on competition and would be beneficial to the combining depository institutions and to the public.

Decision Criteria

In evaluating a business combination, the OCC considers:

- **The effect of the transaction upon competition.** Generally, the OCC will not approve a combination that would result in substantially adverse competitive effects, except in an emergency. (See "Emergency Combinations" section in the Summary of Process section in this booklet)
- **The financial and managerial resources and future prospects of the merging and resulting institutions.** The OCC weighs safety and soundness factors and normally will not approve a combination that will result in a bank with inadequate capital, unsatisfactory management, or poor earnings prospects. Except for combinations that qualify as a business reorganization, no combination in which the aggregate total asset size of the acquiring bank will increase by more than 50 percent can qualify for the expedited review process. The OCC also will consider the applicant's efforts to identify and manage any systems risk implications associated with the proposed business combination (e.g., software compatibility or systems integration problems, hardware system failures, and potential "year 2000" problems). (Refer to Systems Integration Considerations and Year 2000 Considerations under the Specific Requirements section of this booklet for additional guidance.)
- **The performance of the applicants in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods.** The OCC judges the applicants' performance in meeting the credit needs of their communities, including the low- and moderate-income neighborhoods. The combination application may be denied based on the applicants' performance. (Refer to the CRA discussion under the Specific Requirements section of this booklet for additional guidance.)
- **The convenience and needs of the community served.** The "convenience and needs" factor can be distinguished from the CRA

requirements in that the convenience and needs analysis is prospective, whereas the CRA requires the OCC to consider the applicants' records (i.e., past performance, except in charter proposals, for which the OCC takes into account the applicant's description of how it will meet its CRA objectives). In a merger transaction, for example, the OCC will consider the resultant, combined bank's plans for closing branches, particularly in low- or moderate-income areas. (Refer to the Convenience and Needs discussion under the Specific Requirements section of this booklet for additional guidance.)

Common Types of Combinations

Affiliated Combinations

Affiliated combinations are mergers, consolidations, and purchase and assumption transactions between depository institutions, when more than 50 percent of the outstanding voting stock of each is, or will be, commonly owned. The OCC does not require an applicant to submit a competitive analysis for a combination between affiliates, since such a combination has no effect on competition.

Bank mergers, consolidations or asset purchases that occur after holding company mergers, consolidations or asset purchases are considered affiliated transactions. However, in multiple-step transactions where the acquiring BHC will not file an application with the Fed, because the Fed has waived the Bank Holding Company Act application requirement, the application filed with the OCC must include a competitive analysis. The OCC will review the competitive effects of a business combination between banks in such multiple-step transactions as if the banks were unaffiliated.

Nonaffiliated Combinations

Nonaffiliated combinations are mergers, consolidations, and purchase and assumption transactions between nonaffiliated depository institutions. A nonaffiliated business combination application must include an analysis of the competitive effects of the transaction. An applicant contemplating such a combination should refer to the "Bank Merger Competitive Review Process" in the Specific Filing Requirements section of this booklet for guidance.

Specific Combinations

Intrastate Combinations

National or state banks, including state-chartered thrifts, may merge or consolidate with a national bank located in the same state under 12 USC 215 or 215a and 12 USC 1828(c). Also, the OCC is authorized by 12 USC 215c

to approve direct mergers and consolidations between national banks and federal thrifts (see the discussion that follows under the Bank and Thrift Combinations heading). A national bank also may engage in purchase and assumption transactions whereby the bank acquires the assets of, or assumes the liability to pay deposits of, a target depository institution. If the target is a national bank that will go into liquidation, its shareholders must approve the transaction under 12 USC 181.

Interstate Combinations

Interstate Combinations under the Riegle-Neal Act

The Riegle-Neal Act permits combinations of insured banks⁴ with different home states by merger, consolidation, or purchase and assumption. Branches of each bank involved in the combination may be retained by the resulting bank. Interstate combinations may occur under the Riegle-Neal Act, unless one of the states involved opted out of interstate combinations before June 1, 1997. Only two states — Texas and Montana — enacted statutes designed to “opt-out” of Riegle-Neal. Banks in states that opt out may neither acquire nor be acquired by an out-of-state bank.

The following requirements, in addition to those of the BMA and 12 USC 215 and 215a, apply to interstate transactions under the Riegle-Neal Act:

- **Age limits**) The bank being acquired must have existed for at least the minimum period of time, if any, specified in the host state’s statutes (up to a maximum of five years). Banks chartered solely to acquire a bank (i.e., interim banks) are deemed to have existed for the same period of time as the target bank.
- **Filing requirements**) An acquiring bank must comply with the filing requirements of any state that will become a host state as a result of the transaction, if the requirements do not discriminate against out-of-state banks and bank holding companies or their subsidiaries and are similar in effect to those imposed on out-of-state nonbanking corporations (i.e., “doing business” filing requirements). An acquiring bank also must submit a copy of its OCC application to the state bank supervisor of the host state. The OCC may not approve a combination application if the applicant fails to comply with applicable filing requirements.
- **Concentration limits**) The Riegle-Neal Act imposes nationwide and statewide deposit concentration limits on certain interstate merger transactions. Those limits, however, pertain only to interstate merger

⁴The Riegle-Neal Act does not apply to combinations between national banks and federal thrifts or uninsured banks.

transactions involving nonaffiliated banks, and the statewide limitations apply only when both institutions or their affiliates have branches in the state.⁵ Nonetheless, the acquiring bank in an affiliated combination should assess the applicability of separate state-imposed concentration limits, if any.

- **Community Reinvestment Act (CRA) considerations**) All interstate combinations, including affiliate combinations, are subject to the CRA and, in reviewing combinations, the OCC considers compliance with that act. However, the Riegle-Neal Act imposes additional CRA criteria on all nonaffiliated Riegle-Neal interstate mergers.⁶ Those additional criteria do not apply to mergers between affiliated banks, however.
- **Adequate capital and management**) Each bank involved in the combination must be adequately capitalized as of the date the application is filed. In addition, the resulting bank must continue to be adequately capitalized and managed upon consummation of the combination.

Combinations of Interstate Banks under 12 USC 215 or 215a

National or state banks, including state-chartered thrifts, may consolidate or merge into a national bank located in the same state.⁷ This includes a consolidation or merger between an existing interstate bank and another bank in one of the states in which the interstate bank is located. Branches of each bank involved in the combination may be retained if they meet the requirements of 12 USC 36(b)(2). Such interstate combinations under 12

⁵The nationwide limit prohibits the OCC from approving an interstate merger transaction if the resulting national bank and all of its insured affiliated depository institutions would control, upon consummation, more than 10 percent of the total amount of deposits of insured depository institutions in the United States. The statewide limitation prohibits the OCC from approving an interstate merger transaction if the resulting bank (and all of its insured depository institution affiliates) would control 30 percent or more of the total deposits of insured depository institutions in any state involved in the transaction. This 30 percent limit may be increased by state statute, regulation, or order or, if approved by the state bank supervisor and the standard of approval does not discriminate against out-of-state banks or holding companies or their subsidiaries. The Riegle-Neal Act also preserves any authority of the states to impose lower concentration limits.

⁶In determining whether to approve a nonaffiliated combination that results in a bank having a branch in a state in which it had neither a branch or an affiliated bank immediately prior to the transaction, the OCC will consider: compliance with the CRA (as it currently must do for any business combination); the most recent written CRA evaluation of any bank that would become an affiliate of the resulting bank; and compliance by the applicant with applicable state CRA laws.

⁷Combinations between national banks and thrifts under this authority may constitute "Oakar" transactions subject to additional requirements. These will be discussed more fully under the Bank and Thrift Combinations heading that follows.

USC 215 or 215a are subject to the same provisions and requirements as combinations of intrastate banks. An interstate combination under 12 USC 215 or 215a involves a bank that already is interstate. An interstate combination occurs commonly under 12 USC 215 or 215a:

- **With a Riegle-Neal Interstate Bank)** Under the Riegle-Neal Act, banks in different states may merge with each other to form one bank with branches in the different states. A bank that has its main office and branches in more than one state is located in each such state, and subsequent combination transactions in each state may occur under 12 USC 215 or 215a.⁸
- **After a Main Office Relocation)** Prior to June 1, 1997, 12 USC 30 allowed a national bank to become an interstate bank by moving its main office across state lines (up to 30 miles) and retaining its branches where they existed before the relocation. After such a relocation, the bank has offices (main office or branches) in more than one state and, thus, is located in each state. Subsequent combination transactions then may occur in each state under 12 USC 215 or 215a. National banks may still undertake interstate main office relocations after June 1, 1997; however, the statutory standards permitting branch retention in the former main office state have been changed. Prospective applicants should contact the appropriate OCC licensing staff for additional information.
- **With an Interstate State Bank)** An interstate state bank (which includes state commercial banks, state savings banks, and state savings and loan associations) may combine with a national bank located in a state in which the state bank has offices (main office or branches) under 12 USC 215 or 215a. The manner by which the state bank originally became interstate (e.g., in a Riegle-Neal Act transaction or in some other way as authorized by applicable law) does not affect the subsequent interstate combination. An interstate state bank also may convert into a national

⁸A bank also may become an interstate bank under the Riegle-Neal Act by establishing or acquiring a branch in a state in which it is not located through the presence of its main office or a branch. A bank may establish a de novo branch in a state in which it is not located if the state where the de novo branch is to be established has in effect a law that expressly permits all out-of-state banks to establish de novo branches in the state, and the law applies equally to all banks. Applications for de novo branches are subject to the same state filing, CRA, and capital and management requirements as are applications for interstate merger transactions. Banks also may acquire branches in a state other than its main office or branch states, without acquiring the bank that is selling the branch, if the law of the state where the branch is located permits branch acquisitions by out-of-state banks. Those transactions are treated as interstate merger transactions and are subject to all of the standards for approval of an interstate merger transaction, except that the state in which the branch is located, rather than the main office state or the chartering state, is considered to be the home state of the selling bank. Although the issue has not been resolved definitely, it also appears that compliance with state age laws may be determined by the age of the branch, not the selling bank.

bank under 12 USC 35 and retain its branches under 12 USC 36(b)(1), either as an independent transaction or as the first step in combining with another national bank.

Bank and Thrift Combinations

The OCC is authorized by 12 USC 215c to approve direct mergers and consolidations between national banks and federal thrifts. If a transaction involves a national bank in one state combining with a federal thrift in another state, an interstate federal thrift, or an in-state federal thrift in a state that limits branching, issues of branch retention may arise. In those circumstances, the prospective applicant should contact its respective OCC district licensing staff. Although the full scope of section 215c has not been determined, it most clearly applies to those combinations under the Oakar Amendment that result in a bank with deposits insured by both the Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF), because of a combination between a BIF- and a SAIF-insured institution. Other sources of authority, as previously discussed, permit national banks to merge or consolidate with state thrifts or engage in purchase and assumption transactions to acquire federal or state thrifts.

The OCC analyzes such transactions by applying BMA standards, capital requirements, and the provisions of other applicable law.⁹ If the combination involves the acquisition by a BIF-insured national bank of a SAIF-insured thrift, whether federally chartered or state-chartered, the transaction is an Oakar Amendment transaction.¹⁰ The Oakar Amendment applies specific requirements to Oakar transactions involving the acquisition of a SAIF-insured institution located in one state by a BIF-insured institution owned by a bank holding company located in another state. Those standards pertain to:

- State-imposed minimum age requirements, which cannot exceed five years, for the entity being acquired. The 30 percent statewide and 10 percent nationwide deposit concentration limits.

⁹Other standards pertain to the age of the entity to be acquired; compliance with a national concentration limit of a 10 percent resulting bank and all of its insured depository institution affiliates; and compliance with the 30 percent state concentration limit by the resulting bank and all of its insured depository institution affiliates (except that this requirement does not apply if the resulting bank and its affiliates are not already located in the state of the entity to be acquired). This 30 percent limitation may be increased by the state by statute, regulation or order, or if the acquisition is approved by the appropriate state regulator using standards that do not discriminate against out-of-state banks, bank holding companies, or their subsidiaries. Acquiring banks also should assess the applicability of state-imposed concentration limits, if any.

¹⁰Although rare, Oakar transactions also may involve the acquisition by a SAIF-member national bank of a BIF-insured thrift or a BIF-insured national bank of a SAIF-insured state or national bank.

- Compliance by the bank holding company with CRA as measured by the performance of each insured depository institution controlled by it.
- Adequacy of management and capital of the holding company.
- Compliance with any applicable state CRA laws, state antitrust laws, and state-imposed deposit concentration limits.

Oakar transactions are eligible for expedited review if the transaction satisfies the qualifying criteria under 12 CFR 5.33(d)(2) or 5.33(j)(1).

Reverse Triangular Mergers

Generally, most business combinations are forward combinations in which the target institution is merged into the acquiring bank, which becomes the resulting institution. However, under a reverse triangular merger, the acquiring bank is merged into the target institution, which becomes a subsidiary of the acquiring bank's holding company. An applicant might structure a business combination as a reverse triangular merger for tax reasons. However, unless the target bank is 100 percent owned by a bank holding company, the OCC generally denies a reverse triangular merger, because dissenters' rights are not granted by statute to the target banks' shareholders. Based on Internal Revenue Service (IRS) interpretations, often the combining institutions can achieve the same results for tax purposes, if the applicant structures the transaction as a consolidation under 12 USC 215, which provides dissenters' rights to shareholders of all parties to the combination. The OCC has made exceptions to allow reverse triangular mergers when the transaction cannot be accommodated through a forward combination, if it has been approved unanimously by the target bank's shareholders, or the target bank is a state bank, and state law protects the dissenting shareholders.

Interim Bank Combinations

Common Uses

OCC approval is required for interim national bank combinations. Interim banks generally are used in three types of transactions. The first type involves a bank's or an existing bank holding company's acquisition of a nonaffiliated target bank. The bank or bank holding company first establishes an interim bank subsidiary and uses that bank to acquire a nonaffiliated target bank by merger (12 USC 215a) or by consolidation (12 USC 215). The holding company is assured of 100 percent ownership of the target bank, since all shareholders of the target bank must surrender their shares in exchange for consideration.

The second type of transaction involves a bank holding company that desires to eliminate minority shareholders of an existing subsidiary bank or "freeze out" transactions. The bank holding company forms an interim bank, and the interim and the existing bank are combined in either a statutory merger (12 USC 215a) or consolidation (12 USC 215).¹¹ Minority shareholders of the existing bank normally receive either cash or shares of the bank holding company in exchange for their shares of the existing bank.

The third type of transaction involves the establishment of a bank holding company structure for bank ownership. Directors of the existing bank form a new company that registers with the Federal Reserve Bank (FRB) to become a bank holding company. (When ownership of the bank holding company is substantially similar to that of the existing national bank, generally, the FRB requires only a 30-day prior notice of the bank holding company's formation.) The new company organizes the interim bank, which combines with the existing bank. Shareholders of the existing bank normally receive shares of the new bank holding company in exchange for their shares.

The OCC conditions its approval of an interim bank combination on the FRB's approval of the holding company acquisition or formation when an application is required by the FRB. The OCC does not require an applicant to submit a competitive analysis for an interim bank combination in which the FRB performs a competitive analysis of the related holding company application.

Structure Issues

For interim national bank combinations structured as a merger under 12 USC 215a, the acquiring bank must be the interim bank and the target bank must be the existing bank to preserve dissenter's rights for the shareholders of the existing bank, unless the shareholders of the existing bank unanimously approve the transaction. Since the purchase and assumption structure does not provide dissenter's rights for shareholders of the target bank, the OCC generally will not approve purchase and assumption transactions that transfer all of a target institution's assets and liabilities to an interim bank.

¹¹Interim bank transactions are eligible under 12 CFR 5 for expedited review only in a corporate reorganization resulting in the formation of a new bank holding company (see 12 CFR 5.33(d)(2)(ii)). A statutory merger involving an interim bank to eliminate minority shareholders ("freeze out" transactions) does not qualify for expedited review. However, if the transaction is structured as a consolidation and the resulting national bank's charter number is that of the existing bank, the transaction can qualify for expedited review if it satisfies the streamlined application criteria under 12 CFR 5.33(j)(1).

Chartering and Organization Requirements

Applicants for interim bank combinations must apply for and receive approval to organize an interim national bank. The OCC has developed procedures for processing the interim charter and business combination applications simultaneously. (A blank [Interim National Bank Application](#) and attachments are provided in the Documents section of this booklet.) Although an interim bank does not operate as a bank, it must comply with various chartering and organization requirements.

The OCC grants preliminary approval to form the interim bank, when it acknowledges receipt of the business combination application. The interim bank becomes a legal entity at that time and may enter into legally valid agreements or contracts after it files and the OCC accepts its executed [Articles of Association](#), [Organization Certificate](#) and [Oath of Directors](#). Before consummating the combination, the interim bank must complete the organization process. The specific steps needed to organize the interim bank are listed in the "[Application for Interim National Bank](#)" in the Documents section of this booklet.

Capitalization

Interim national banks must meet the minimum capital requirements of 12 USC 51. A holding company may borrow from a correspondent bank to capitalize the interim bank. The interim bank's capital does not need to be retained in the resulting bank, however, and, with OCC approval, can be returned to the holding company immediately following consummation.

Directors' Qualifications

Interim bank directors' residency and stock ownership requirements are the same as those for operating national banks under 12 USC 72.

Timing Issues

Although an interim national bank must be a party to the combination agreement, it does not have to be organized at the time the primary parties execute the initial agreement. The interim bank may become a party to the transaction through an addendum provided in the initial agreement. (See the discussion under Agreements in the Specific Requirements heading of this booklet.)

Summary of Process¹²

Prefiling Discussions

The prefiling discussion is integral to processing the filing. It enables the filer and the OCC to prepare effectively and process the filing efficiently. Applicants, who are new to the application process or who have questions about the process, are encouraged to request a prefiling meeting to discuss the proposed transaction and processing steps applicable to the proposal. Applicants requesting OCC approval of an activity or transaction involving novel, precedential, or highly complex or sensitive issues should contact the appropriate district office, before actually submitting the application, to discuss the issues it raises. Such applications are expected to contain supporting written analysis, including a legal opinion.

To request a prefiling meeting, the bank's representative or spokesperson should contact the Licensing staff in the appropriate district office, who will coordinate participation by other OCC staff, as necessary.

Expedited Review

An application that qualifies as a business reorganization, as discussed previously in the definitions section, and any application eligible involving a qualifying business combination, will be granted expedited review. Expedited review means that the application will be deemed approved by the OCC as of the 45th day after it is received by the OCC, or the 15th day after the close of the comment period, whichever is later, unless the OCC acts on the application sooner (but in no event prior to the conclusion of the public comment period). However, under 12 CFR 5, the OCC may extend the expedited review period by 10 days to obtain additional information, if it notifies the applicant. The OCC also may remove the filing from expedited review, if the proposed combination presents a significant supervisory, CRA, or compliance concern, or raises a significant legal or policy issue, that requires additional review. In such an instance, the OCC will notify the applicant promptly.

Streamlined Applications

Under 12 CFR 5.33, any transaction that qualifies for expedited review also is eligible for a streamlined application. Therefore, if the proposed business combination meets the definition of either a "business reorganization" or a "qualifying business combination," it will qualify for expedited review and

¹²The procedures section of this booklet contains specific steps for the applicant to follow throughout the application process.

use of a streamlined application. The "Bank Merger Act Application — Streamlined Submission" states the information that may be omitted, which generally will be limited to financial information. Information requirements are not reduced for the CRA, branch closings, convenience and needs, and related matters. (See the Documents section of this booklet.)

In addition, regardless of whether an applicant qualifies for a streamlined or standard application, the OCC will ask specifically whether the surviving bank will honor CRA-related commitments entered into by any institution that is party to the combination. (See the Documents section of this booklet.)

The Appendix section of this booklet contains a diagram to assist the applicant in determining whether the proposed business combination meets the criteria for expedited review and use of a streamlined application.

Public Involvement and Notice

The "Public Involvement" booklet describes the general treatment of public comments and requests for meetings and hearings and how they will affect expedited review. It also describes the reasons an application would be removed from expedited review. Comments and concerns about CRA and convenience and needs that relate to any party to the business combination may lead to removing an application from expedited review. For example, if the target institution has a CRA rating of less than satisfactory, the application will be removed from expedited review. Receipt by the OCC of a substantive CRA protest of any proposed combination application will commonly cause its removal from expedited review.

The public comment period for a business combination is generally 30 days commencing on the date of first publication. Notice of the application must be published in a newspaper of general circulation in each community in which the main office of a depository institution involved in the transaction is located. A sample notice of publication is included in the documents section of this booklet.

A depository institution that is party to a combination must publish three times its intention to combine, at intervals spaced throughout the 30-day comment period. The first publication should be on or about the date the application is filed with the OCC, but in no event more than three days before or after the date the application is filed. The applicant should submit to the OCC confirmation of the public notice as part of the business combination application. This confirmation should include a statement

containing the name and address of the newspaper used and dates of publication.¹³

Prior to filing, applicants with operations in more than one state and/or in more than one major metropolitan market should consider publishing, at the same time, additional notices in major markets in which they operate to ensure adequate public awareness. In addition, the OCC may require additional public notice or may provide public notice itself, if it believes it necessary to ensure adequate notice and opportunity to comment. Material differences between initial and subsequent notices may result in extended comment periods and delays in applications processing.

All notices should be published in the joint names of all depository institutions involved in the transaction. If a bank operates under more than one name or under a name not substantially similar to its legal name, the public notices of any application published in accordance with 12 CFR 5 should contain both the legal name of the bank and the name(s) the bank uses in the community in which the publication circulates.

The notice must state whether the application involves an interim bank charter application and is a merger, consolidation, or purchase and assumption. It also must state whether any branches of the combining institutions will cease to operate as a result of the transaction. The notice should also disclose whether the applicant will be closing branches for reasons unrelated to the proposed business combination. The bank still must follow the procedures found in the "[Branch Closings](#)" booklet. If the applicant knows that branches will close or consolidate because of the combination, but those decisions have not yet been finalized when the application is filed with the OCC, the notice should disclose that an as yet undetermined number of offices will cease to operate. Finally if the applicant subsequently identifies some branches to be closed, during the comment period, it should amend subsequent publications to disclose this new information.

For applications accompanied by an emergency processing request, the applicant should not publish until advised by the OCC whether the combination will be processed under emergency procedures. When emergency procedures are used, the first publication should appear on the day after the request was approved or as soon as possible thereafter. The second and final publication must occur approximately one week after the date of the first publication.

¹³The notice described in this section should not be confused with the notice that must be published for the conduct of any shareholder meeting. For a discussion of publication requirements for shareholder meetings, see the subsection on Shareholders Considerations under the Specific Requirements section.

Competitive Factors

An applicant for a nonaffiliated business combination must provide a competitive analysis of the transaction, including a definition of the relevant geographic market or markets. The applicant can satisfy this requirement by submitting a Merger Screen. (See the "Bank Merger Competitive Review Process" in the Specific Filing Requirements section of this booklet and the "Merger Screen" of the Documents section of this booklet for specific instructions).

Parties planning a business combination that raises anticompetitive concerns are encouraged to consult the OCC and the DOJ before submitting an application. When a proposed combination raises a significant anticompetitive concern, it is often possible to resolve it by agreeing to divestiture usually through the sale of branches to another bank. A divestiture will resolve DOJ concern about loss of market competition, if a strong and vigorous competitor will replace the competition lost because of the merger.

Applications that present competitive concerns will be removed from expedited review. A combination between nonaffiliated institutions will be removed from expedited processing for additional competitive review if it would increase the HHI by more than 200 points in any relevant banking market that has a post-acquisition HHI of at least 1800. The application also will be removed from expedited processing if the resulting bank will have more than 35 percent of the deposits in a relevant market (excluding markets in which the acquiring bank had 35 percent or more deposits prior to the combination).

The competitive analysis for a business combination application for banks that compete directly in a rural geographic market could be subject to a different standard than other business combination applications. Since 1983, the OCC has not recognized geographic markets with populations of less than 10,000 to be economically significant. In those markets the OCC uses a de minimis test to evaluate the competitive effect of a business combination and has concluded that any anticompetitive effects are considered negligible. Generally, the OCC would not object to a proposed business combination in such a market, solely on anticompetitive grounds.

Combinations between affiliated institutions are deemed competitively neutral. Those transactions do not raise competitive concerns.¹⁴

¹⁴However, business combination transactions that also include a bank holding company merger, where the BHC has requested a waiver from filing a BHC merger application with the Fed or expects to file a 10 day notice with the Fed must include a competitive analysis in the application filed with the OCC (see Affiliated Combinations discussion on page 7).

Rapid Growth Considerations

Nonaffiliated applicants that have grown rapidly through other recent acquisitions may have their business combination applications removed from expedited review to ensure adequate time for supervisory review. Applications between nonaffiliated institutions will be removed from expedited processing if the acquiring bank, over the 12 months preceding a filing, has acquired other depository institutions whose total assets exceed 35 percent of the acquiring bank's total assets.

Filing the Application

An original and four copies of an application must be submitted to the OCC regardless of whether the application filing is standard or streamlined. Applicants filing by diskette must submit a hard copy of the signature page(s) in the application or attachments.

When the OCC receives an application, it sends copies to the Department of Justice (DOJ), the Federal Deposit Insurance Corporation (FDIC), the appropriate Federal Reserve Bank (FRB), and if a thrift is involved, the Office of Thrift Supervision (OTS) for their views on the competitive effects of the proposal. By statute, those agencies generally have 30 days to review and comment on the application.

When acknowledging receipt of an application, the OCC's licensing staff will inform the applicant whether it qualifies for expedited review and will provide a target time frame for processing the filing. OCC staff will notify the applicant promptly if the situation changes (e.g., the OCC removes the application from expedited review).

OCC Review

The OCC begins its review by determining whether the application is accurate and complete. It may ask the applicant to provide additional detailed information about any aspect of the proposal, including competitive effects, to reach an informed decision. Although the OCC will strive to make such requests at the earliest possible date, it may ask for additional information or opinions from an applicant at any time during the processing of a corporate filing.

Examinations and Investigations

The OCC may conduct examinations and field investigations to develop information needed to render its decision. Applicants will be notified of those activities by letter. The OCC will notify applicants if it requires an

examination or field investigation; the notice will indicate whether the applicants will be charged for the examination or investigation.

OCC Decision

The OCC will determine whether approval is consistent with applicable law, regulations, policies, and safety and soundness considerations.

For applications that do not qualify for or are removed from expedited review, the OCC will set a target decision date on a case-by-case basis. The OCC expects that most applications that do not qualify for expedited review will be decided within 60 calendar days from their receipt or publication of public notice, whichever is later. However, an activity or transaction involving novel, precedential, or highly complex or sensitive issues could take longer to decide.

Consummation

The parties to an affiliated business combination that is considered by the OCC and DOJ under the Prospective Competitive Factors Reports process (see discussion on page 32 in this booklet) can consummate the transaction upon satisfying any requirements in the OCC's approval. However, parties to a nonaffiliated combination must wait up to 30 calendar days after the OCC's approval before consummating it. The OCC may, and generally does, shorten the 30-day delay, with the concurrence of the DOJ, to not less than 15 days. During the 15-day waiting period, the DOJ may extend the post decision waiting period to 30 days or seek an injunction that prohibits consummation, if it determines that the proposed business combination will have a significantly adverse effect on competition. Combinations not subject to the BMA also may be consummated immediately upon the OCC's approval, subject to satisfying any requirements it imposed.

Applicants should advise the OCC at least 10 days before the desired effective date for the combination, allowing the OCC adequate time to determine if the bank has met all conditions specified in the approval letter. Generally, the OCC will issue its certification letter immediately after consummation of the transaction.

Extensions

When the OCC approves or conditionally approves a filing, the applicant has up to 12 months to consummate the transaction. The approval will lapse, if a combination is not consummated within one year from the date of OCC approval. Extension of the approval time may be requested from the appropriate district office and granted if the applicant can provide sufficient

evidence that the reason for the delay is beyond its control or otherwise satisfy the OCC that sufficient grounds exist to extend the approval.

Appeals

An applicant may request review of an OCC decision under the National Bank Appeals Process. In addition, an applicant may appeal a decision to the OCC's Ombudsman or according to the agency's procedures as set forth in 12 CFR 5.

Emergency Combinations

The BMA provides for emergency combinations when the OCC determines that an emergency exists requiring expeditious action. The OCC is permitted

to shorten the notice and comment periods before approval to 10 days and shorten the post-decision waiting period to five days.

A national bank interested in acquiring a target institution in an emergency must submit a written request to the OCC for emergency processing. The request should contain information to assist the OCC in determining that the target is affected by a combination of circumstances sufficiently serious to require swift action. The OCC will solicit written comments from the target institution's primary supervisory agency to attest to its condition. The OCC will subsequently review and evaluate this information and decide whether to approve or deny the acquiring national bank's request for emergency processing. If the OCC disapproves the request for emergency processing, the combination is handled according to normal licensing procedures.

The applicant generally submits the standard combination application with the request for emergency processing. The OCC will review the application for accuracy and completeness, while it considers the request for emergency processing. The OCC will begin to analyze the application immediately after it approves the request for emergency processing. It will provide copies of the combination application for emergency processing to the DOJ, the FRB, the FDIC, and if applicable, the OTS for their views on the competitive effects of the proposal. By statute those agencies have 10 days to review and comment on the application. An institution that is party to an emergency combination must publish its intention to combine twice during a 10-day period. The public comment period for an emergency combination application lasts 10 days from the date of the first publication.

If the OCC approves an emergency combination, the applicant can consummate the transaction at the end of a five-day period. The OCC will

issue a letter certifying consummation, if the bank has met all conditions specified in its approval letter.

Failure Acquisitions

The BMA provides for combinations when the OCC determines that immediate action is necessary to prevent the probable failure of a depository institution involved in the transaction. It allows the OCC to eliminate the notice and comment requirements and permits consummation immediately upon approval. Policies and procedures for those transactions are covered in the "[Failure Acquisitions](#)" booklet.

Specific Requirements

Accounting

Affiliated Combinations

A combination between two or more affiliated banks is accounted for in accordance with AICPA Accounting Interpretation No. 39 to Accounting Principles Board Opinion No. 16. This interpretation requires that such combinations be accounted for at historical cost in a manner similar to pooling of interest accounting. This accounting is appropriate when all or substantially all (90 percent or more) of the assets of the target entity are transferred to an affiliated bank.

The call report requires that the transfer of individual or groups of assets between affiliated parties be accounted for at fair value, and that banks recognize gains and losses on the transfer in the same manner as if they had sold the assets to a third party. This call report provision is applied to all transfers of assets that do not involve "substantially all" of the assets of an affiliate and, therefore, do not qualify under Interpretation No. 39.

Sometimes this fair value requirement discourages affiliate combinations that would benefit significantly the holding company and its subsidiary banks. An example is a one-time reorganization that would permit a holding company's wholly owned subsidiary banks to transfer certain banking operations to achieve operational efficiencies, such as moving credit card operations from one wholly owned bank subsidiary of a holding company to another. In those unusual instances, the OCC has allowed certain entities to transfer assets at the lower of cost or market value.

Nonaffiliated Combinations

Combinations of banks are accounted for under either the *pooling of interests accounting* or "purchase" method of accounting. The pooling method is used when certain conditions set forth in Accounting Principles Board Opinion No. 16 (APB 16) are met. This generally will involve business combinations accomplished through an exchange of common stock for common stock. This method accounts for combining entities as if they always had been one company by merely adding together the existing historical-based amounts. Generally, the only accounting adjustments are those required to eliminate intercompany accounts and record the issuance of stock by the surviving entity.

When the combination of the parent holding companies qualifies for *pooling of interest accounting*, a concurrent combination of the subsidiary banks or their assets would also be accounted for at historical cost. However, the

bank or asset combinations may not always occur simultaneously with the holding company combination. Often this delay results because of the need for different regulatory approvals. In such situations, the subsidiary banks would be allowed to use historical cost, if they can demonstrate an intent to combine the subsidiary banks or assets at the time of the original holding company combination.

Purchase accounting is used for all acquisitions that do not qualify for the pooling method. This may involve situations in which cash and/or debt are used to acquire another entity, or when certain other requirements set forth in APB 16 have not been met. This method records an acquisition on the books of the acquiror by allocating the purchase price to the assets acquired and liabilities assumed, based on their fair values. The capital section of the acquired bank is eliminated and entries are made to record the cash, debt, or stock issued. Any excess of the cost of the acquisition over the net fair value of the identifiable assets acquired and liabilities assumed is recorded as goodwill, which is not part of regulatory capital.

The loan portfolio is accounted for at fair value. Determination of fair value is generally made on a loan-by-loan basis and should consider both interest rate and credit risk. The discount resulting from this analysis is accounted for on an individual loan basis. If a loan is on accrual status, the discount should be accreted to income to earn a level yield over the remaining life of the loan. Subsequent impairment of value to a loan should be recognized through a charge to current operations.

An exception to the requirement for an individual loan analysis is made for groups of similar consumer loans. The fair value of those loans may be determined on an aggregate basis. However, the discount resulting from this analysis should be applied to all the loans in the pool on a pro rata basis, so that each can be accounted for separately.

An appropriate allowance for loan losses of the acquired bank may be included as a purchase adjustment. However, the allowance should not exceed the amount on the acquired bank's books immediately prior to the acquisition.

Marketable securities are recorded based on quoted market values. Certain other assets, such as purchased bank premises and OREO, are accounted for at fair value, based either on internal evaluations or independent appraisals. Liabilities, principally deposits, are recorded generally at historical cost. However, a core deposit intangible may be recorded as a separate asset.

Both identifiable and unidentifiable intangible assets (goodwill) should be recorded and amortized in accordance with generally accepted accounting principles. An identifiable intangible asset is amortized over its useful life. An accelerated method of amortization should be used for identifiable

intangible assets in which the determination of the asset's value is based upon declining earning amounts. This would require that larger amounts be amortized in the earlier years of the asset's estimated life.

An example of an identifiable intangible asset requiring an accelerated method of amortization is core deposit intangibles. A core deposit intangible is recorded as a separate asset and amortized for a period not exceed 10 years.

The straight line method of amortization may be used for all other intangible assets, including goodwill, which is amortized over its useful life, not to exceed 25 years.

In those rare instances when an identifiable intangible asset, such as a core deposit intangible, is not determined separately, the entire intangible asset may be amortized over 25 years using an accelerated method or 15 years using the straight line method.

Push-down Accounting

When a holding company acquires a bank, the new basis of accounting is recorded on the holding company's books. Push-down accounting also establishes this new basis of accounting on the books of the acquired bank. Push-down accounting is required when 95 percent or more of the voting stock of the bank is acquired. With the OCC's approval, push-down accounting may be used when more than 80 percent, but less than 95 percent is acquired.

Banks acquired prior to October 1, 1989 were not subject to this requirement. Accordingly, when one of those banks is combined in an affiliated transaction, the remaining purchase accounting adjustments (i.e., intangible assets and bank premises) are pushed down to the surviving bank at that time.

Agreements

An agreement to combine must be approved by a majority of the board of directors of each of the participating depository institutions involved in a merger (12 USC 215a) or a consolidation (12 USC 215). It also must be ratified and confirmed by the shareholders of each combining institution. (See the Shareholders Consideration heading under this section for additional information.) A purchase of assets and assumption of liabilities agreement is usually executed by management as directed by a board of directors' resolution.

In combinations involving interim banks, the OCC will accept agreements executed between the primary parties (e.g., an operating depository

institution and a bank holding company). The agreement must provide for the interim bank to become a party to the agreement upon its organization. This is done through an addendum to the initial agreement. Combination agreements structured in this manner are permissible if: (1) the agreement is a legal instrument satisfying all the requirements of 12 USC 215 or 215a; (2) the initial agreement clearly states the intent to include the interim bank in the combination; and, (3) the interim bank becomes a party to the agreement before consummation of the combination.

Assumption of Liabilities

A 12 USC 215 consolidation and 12 USC 215a merger require the consolidated or receiving bank to assume all liabilities and obligations of the consolidating or merging banks. As a general rule, the OCC also requires the acquiring bank to assume all liabilities and obligations of the target bank in purchase and assumption transactions when the target bank will be dissolved. Exceptions to this policy require OCC approval on an individual basis. Exceptions have been made when adequate protection is provided to possible creditors.

Bank Name

The OCC considers the name of a national bank to be primarily a business decision. When different names are used for marketing after consummation, the bank should take steps to prevent customer confusion about the institution with which they are doing business and the extent of deposit insurance available for its accounts. Although the OCC does not regulate bank names, the National Bank Act requires that every national bank's name include the word "national." (See [Changes of Corporate Address and Title](#) booklet for additional information.)

Branch or Trade Names

The OCC permits national banks to operate branches under different trade names. However, the OCC is concerned that if customers believe they are dealing with two different depository institutions, they may inadvertently exceed FDIC insurance limits (generally, \$100,000 per institution) by depositing excess amounts in different branches of the same institution. The OCC believes it is important that customers understand the scope of FDIC insurance in these circumstances. Accordingly, a bank that intends to use a different name for a branch or other facility should be advised to take reasonable steps to ensure that customers will not become confused and believe that its facilities are separate institutions or that deposits in the different offices are separately insured. (See the Branch and Trade Names discussion in the "[General Policies and Procedures](#)" booklet for specific guidance.)

Branch Closings

The applicant should identify branch sites that will cease to operate as a result of the transaction. If the applicant is unable to determine at the time of filing its exact number and location, the application should state that an as yet undetermined number of offices will close and provide as much specificity as possible at the time. When the exact locations are determined, the applicant must follow established branch closing procedures. (See the "[Branch Closing](#)" booklet.)

Combinations Involving Nonbank Affiliates and Bank Operating Subsidiaries

General

As part of an affiliated bank combination, a bank holding company may consider combining nonbank holding company subsidiaries with bank operating subsidiaries, or transferring ownership of a nonbank subsidiary from the holding company to the bank, with the resulting company organized as a bank operating subsidiary. This type of transaction may trigger the requirement for an operating subsidiary notice or application. In addition, such transactions may present the following issues:

- **Permissibility of the nonbank subsidiary's activities**—A bank should consider whether the nonbank/thrift affiliates are engaged in activities permissible for national banks or their operating subsidiaries. If the activities are not permissible, the application must include a discussion of applicant's plans to divest the activity or bring it into compliance.
- **Sections 23A and 23B of the Federal Reserve Act (FRA)**¹⁵—Transactions between "affiliates"¹⁶ (i.e., a bank and its parent holding company or nonbank subsidiaries of the holding company) must be conducted at arm's length under Section 23A and 23B. Generally, pricing must reflect fair market value. Quantitative limits and the prohibition on purchasing low-quality assets also must be considered. However, as discussed later, a full or partial exemption from those restrictions may be available, depending on the structure of the reorganization.

¹⁵12 USC 371c and 371c-1.

¹⁶An "affiliate" generally includes any company (including another bank) that controls the bank or that is controlled by the same company or by the same shareholders that control the bank. It also includes bank subsidiaries of a bank, investment companies for which the bank or any of its affiliates act as investment advisers, and certain other companies sponsored and advised by the bank, its subsidiaries, or affiliates.

- **Branching**—Banking offices that engage in “core banking functions” and serve the public will be considered branches under 12 USC 36. It may be necessary to restructure the operations of a holding company subsidiary that becomes a bank operating subsidiary to conform to 12 USC 36.

Sections 23A and 23B—Exemptions

A complete exemption to all affiliate-transactions restrictions, including the prohibition against a bank’s purchase of low-quality assets from an affiliate, is available when a reorganization involves only the merger of two or more banks subject to the BMA and any resultant change in ownership of the merging banks’ subsidiaries (provided they remain subsidiaries of a bank in the affiliated group). This is also true of purchase and assumption transactions subject to the BMA. The Federal Reserve Board (FRB) has issued an interpretive ruling (see 12 CFR 250.241) that section 23A does not apply to any transaction that is subject to review and approval under the BMA. Moreover, section 23B does not apply to merging banks, because a bank is not considered an affiliate under the definition of “affiliate” in 23B. Accordingly, issues under sections 23A or 23B will not be present if all aspects of the reorganization are subject to review under the BMA.

For transaction not subject to the BMA, bank-to-bank affiliate transactions also receive favorable treatment under section 23A, the so-called “sister-bank” exemption, although such transactions still remain subject to the prohibitions against unsafe and/or unsound transactions and purchasing low-quality assets. Transactions between affiliated banks also are entirely exempt from section 23B, regardless of whether the BMA applies.

Sections 23A and 23B—Provisions

Banks often engage in transactions subject to sections 23A and/or 23B in corporate reorganizations (e.g., acquiring a nonbank affiliate from the parent holding company as an operating subsidiary or acquiring assets from a nonbank affiliate) and must therefore consider their restrictions in structuring affiliate transactions. Within those statutes, the three provisions that tend to pose the greatest impediments to structuring corporate reorganizations are: (1) the quantitative limits; (2) the prohibition on purchasing low-quality assets; and (3) the requirement that transactions with affiliates be conducted on arm’s-length terms. As explained earlier, depending on the structure of the reorganization, however, a full or partial exemption from these restrictions may be available.

Quantitative Limits. One area of major concern in corporate reorganizations is that, in the absence of any available exemption, a bank may not engage in

"covered transactions"¹⁷ with an affiliate in an amount that exceeds 10 percent of the bank's capital and surplus — 20 percent of capital for all affiliates as a group. Those limits relating to a bank's capital are so low that a bank's purchase of the stock or substantially all of the assets of an affiliate is likely to exceed those limits and, thus, potentially violate section 23A. The "sister-bank" and BMA exemptions are available to permit affiliated banks to engage in covered transactions with each other (or with each other's subsidiaries) regardless of those limits. For example, a bank may sell its operating subsidiary to an affiliated bank, even if the purchase price exceeds 10 percent of the acquiring bank's capital and surplus.

In general, a bank must observe the quantitative limits when engaging in a covered transaction with a nonbank affiliate. Thus, a bank's purchase of assets from its holding company, or any nonbank subsidiary of that holding company, usually may not exceed 10 percent of the bank's capital and surplus.

An important consideration in corporate reorganizations, if one party is a nonbank affiliate, is that even a "donation" of an affiliate's assets may be viewed as a "purchase," if the bank acquires the affiliate's liabilities at the same time. In other words, if a bank acquires all, or substantially all, of a nonbank affiliate's assets and liabilities through a purchase and assumption transaction, that transaction will be treated as a "purchase of assets" subject to sections 23A and 23B, even if the bank paid nothing to acquire the assets, but merely assumed the affiliate's liabilities. In addition, the value of the transaction to determine compliance with section 23A's quantitative limits is measured by the value of the *liabilities*, not the value of the assets.¹⁸

If a bank indirectly acquires the assets and liabilities of an affiliate through the acquisition of that affiliate's *stock*, the affiliate-transactions issues may be more complicated. Applicants may wish to contact the OCC before engaging in this type of transaction, especially if low-quality assets are involved.

Transfers of Low-Quality Assets. When a corporate reorganization contemplates a bank's acquisition of low-quality assets from an affiliate and the BMA exemption is not available, a banking organization has at least the following four options that are acceptable to both the OCC and FRB staff:

¹⁷"Covered transactions," restricted by sections 23A and 23B, include a bank's purchase of assets from, purchase of securities issued by, or loan or extension of credit to, an affiliate.

¹⁸The general counsel of the FRB has taken the position informally that only those liabilities owed to affiliates of the bank must be counted in determining the value of the transaction. Liabilities owed to unrelated third parties need not be considered. The OCC agrees with this position and has adopted this approach to valuing P&A transactions.

- The affiliate holding the low-quality assets merely may hold them back and transfer the rest of the assets to the bank.
- The affiliate may transfer the low-quality assets to the bank's shareholder(s) as a dividend or in some other way. The shareholder(s) may in turn either keep the assets or *donate*, but not sell, them to the bank. A donation of the low-quality assets may be made concurrently with the bank's purchase of permissible assets from the same transferor.
- The bank may write to the FRB for a special exemption from section 23A.¹⁹
- The affiliate holding the assets may sell any *servicing rights* associated with the assets to the bank, while retaining title to the assets. If the assets later recover and lose their "low-quality" status, they may be sold outright to the bank.

Other options may be available as well. However, in *every* case, the OCC will review any low-quality assets in a portfolio and determine whether their acquisition by a bank conforms with safe and sound banking practices. Applicants are advised to contact the OCC, if a contemplated transfer of low-quality assets presents a barrier to accomplishing a transaction.

Section 23B and the "Arm's-Length Requirement." As previously noted, section 23B of the FRA requires that transactions between a bank and its nonbank affiliates be conducted on an arm's-length basis. This has been interpreted to mean, among other things, that a bank may pay no more than fair market value for the assets it purchases from, and must receive at least fair market value for the assets it sells to, nonbank affiliates. Since the statute specifically exempts all transactions between affiliated banks from its scope, the OCC has opined that asset purchases and sales between affiliated banks need not comply with this requirement and may be valued at cost or any other measure, provided that the transaction is not unsafe or unsound.

Community Reinvestment Act (CRA)

The OCC considers the CRA records for all participating insured depository institutions in making a decision on each proposed combination. It also considers comment letters from the public that have been sent to the OCC prior to the application in connection with any national bank participant's CRA performance. This also pertains to comment letters that have been filed with the OCC during or after the comment period, provided that doing so would not inappropriately delay action on the filing. In addition, the OCC will consider the applicants' responses to those letters.

¹⁹Generally, the Board of Governors has refused to grant exemptions involving low-quality assets.

The OCC also will consider information available from CRA examinations and may conduct a targeted review of a national bank's CRA performance to obtain information necessary to decide the application. If an application is being processed under expedited review procedures, the OCC may extend the process up to an additional 10 days, if a comment contains specific assertions about a bank's CRA performance that, if true, would indicate a reasonable possibility that:

- (i) A bank's CRA rating would be less than satisfactory institution-wide, or, when applicable, in a state or multistate MSA; or
- (ii) A bank's CRA performance would be less than satisfactory in an MSA, or in the non-MSA portion of a state, in which the acquiring bank is expanding as a result of the combination.

The OCC will remove an application from expedited review if more time is needed to analyze information available to the OCC, to complete or analyze the results of a targeted CRA review, to complete scheduled meetings with commenters, or to hold public hearings. The OCC anticipates that this often will occur for transactions involving large banks operating in more than one state or that will result in an interstate bank.

The OCC will remove an application from expedited review if any participating institution has a CRA rating of less than satisfactory institution-wide, or in a state or multistate MSA, or if any participating institution's CRA performance is less than satisfactory in a MSA or in the non-MSA portion of a state in which the acquiring bank is expanding as a result of the combination.

If the CRA record of performance of any participating institution is less than satisfactory overall, or in any state, or in any multi-state MSA, or in the MSA or non-MSA portion of a state, in which the acquiring bank seeks to expand through a business combination, the application will normally be approved, only if the approval is subject to an enforceable condition or conditions that its performance be improved.

Confidentiality

A filer may request that the OCC grant confidential treatment to information in a corporate filing. Nonpublic or confidential data should be submitted separately and designated as such in the application. If a request is made for disclosure of information for which confidential treatment has been sought, the OCC will decide whether to continue to give that material confidential treatment according to the Freedom of Information Act (5 USC 552). (For complete discussion, see the "[Public Involvement](#)" booklet.)

Convenience and Needs

In business combinations, the OCC also considers the effect of the proposed transaction on the convenience and needs of the affected communities.

The OCC will remove an application from expedited review if it needs additional time to obtain or analyze information, whether from adverse comments or otherwise, that raise significant concerns about the convenience and needs of the communities to be affected by a proposed transaction. As with CRA considerations, the OCC may condition the approval of an application to ensure that a proposal will promote the convenience and needs of an affected community.

Fact patterns, normally considered significant "convenience and needs" concerns, that could cause the removal of an application from expedited review include:

- An applicant that has a poor record of helping to meet the banking needs of particular geographies (e.g., rural communities, in which it has branches) and proposes to acquire a bank with offices in other similar areas.
- An acquiror in a business combination that does not indicate in its application that it intends to honor or otherwise assume obligations under CRA commitments made by the target institution.

Conversion from Full-Service to Limited Charter

A full-service chartered bank that intends to limit its powers to those of a special-purpose bank must follow appropriate corporate organizational procedures to amend its [Articles of Association](#). It also should submit a notice of the intended change, a copy of the amended article, and any related applications that may be required to the Licensing staff.

Conversion to a National Bank

State banks and state and federal savings associations may convert directly to national banking associations. See the "[Conversions](#)" booklet for discussion, guidance, and procedures on converting to a national bank.

Department of Justice Review

Nonaffiliated Combinations

The Department of Justice (DOJ) and bank regulatory agencies, including the OCC, assess the competitive effect of bank and bank holding company

mergers to identify combinations that could substantially lessen competition. To speed this competitive review and reduce regulatory burden, the OCC and the DOJ use a process that looks at market shares in specific markets and measures the effect on market concentration through changes in the HHI. The "Merger Screens" in the Documents section of this booklet provide specific directions for determining the pre-merger HHI and the post-merger HHI.

If the OCC determines that no competitive concerns exist and the application satisfies the other "Key Policies" for a business combination, the OCC can approve the transaction, even if the DOJ has concerns over the possible competitive effect of the combination. In some cases, the OCC's approval may include a condition that the applicant will comply with any agreement reached with the DOJ (e.g., divestitures). However, if the OCC determines that the proposed business combination would have a substantially adverse competitive effect, the OCC will generally not grant approval (except in emergencies).

Affiliated Combinations

Through an agreement with the DOJ, known as the Prospective Competitive Factors Report, certain affiliated transactions can be consummated immediately after the OCC grants approval and the applicant satisfies any requirements contained in the approval.²⁰ This eliminates the post-decision waiting period applicable to nonaffiliated business combinations (normally between 15 and 30 days). The Prospective Competitive Factors Report process is not available for a transaction in which two bank holding companies have their merger application pending decision at the FRB when their subsidiary banks file a business combination application with the OCC. For such a transaction, once the FRB decides the bank holding company application, the applicant may request that the OCC consider the bank combination under the Prospective Competitive Factors Report process, but the OCC must obtain DOJ's concurrence.

²⁰The following affiliated transactions are covered under the Prospective Competitive Factors Report: (1) combinations between two or more banks if more than 50 percent of the outstanding voting stock of each of the merging banks is commonly owned; (2) combinations between an interim bank and an existing bank to facilitate the creation a one-bank holding company; (3) combinations between an interim bank established by an existing bank holding company to facilitate the acquisition of an unaffiliated bank by the holding company, provided that an application has been filed with the Federal Reserve Board for approval of the holding company acquisition and the merger is to be consummated only in conjunction with the acquisition; and (4) a P&A of branch offices, if a single bank holding company owns more than 50 percent of the outstanding voting stock of each of the banks involved in the transaction.

Directors' Residency and Citizenship Requirements

A majority of a national bank's directors must reside in the state in which it is located (i.e., the state(s) the bank has its main office or branches) or within 100 miles of the main office for at least one year immediately preceding their election. In interstate transactions, directors may come from any state in which the bank has its main office or a branch. The OCC has discretion, however, to waive those residency requirements. In addition, when a combination involves a bank that is owned by or is an affiliate of a foreign bank, the OCC may waive United States citizenship requirements for a minority of the bank's directors. (See the "[Director Waivers](#)" booklet for additional information.)

Divestitures

For combinations involving nonaffiliated institutions, the applicant should review its market areas and determine if any divestitures are anticipated. If so, plans to divest should be discussed at a prefiling meeting and submitted with the application. Prospective buyers should be identified as soon as possible. If divestitures are required, the OCC may condition its approval on the identification of suitable buyers. Alternatively, the OCC may provide a time period within which divestitures must be completed. Additionally, at the applicant's request, the OCC will condition its approval on a divestiture plan offered in settlement of a DOJ investigation into the competitive effects of the combination.

Legal Lending Limit Calculation

When a business combination results in a change in capital between call report dates, the OCC's final approval letter will confirm that the bank should calculate its lending limit and all other effected statutory limits on the basis of the resulting capital. The new lending limit should be calculated using data from the call reports prepared prior to the consummation of the business combination, adjusted for changes in capital. The bank normally will file its call report and begin calculating its legal lending limit according to 12 CFR 32.4(a) at the end of the quarter following the consummation of the business combination.

Liquidation Account

When the target in a business combination is a thrift that converted from a mutual to a stock institution, the resulting national bank must establish and maintain a liquidation account. This account represents the eligible depositors' interest in the net worth of the mutual institution at the time it converted to a stock institution. In the event of liquidation, eligible depositors are entitled to a priority distribution from the institution's net

worth before any distributions are made to stockholders. In the call report, the account is considered a segregated amount of the bank's undivided profits and should be reported as part of Tier 1 capital.

Main Office Designation

The applicant should consult the OCC prior to the transaction if the main office of the resulting bank in a merger or consolidation under 12 USC 215a or 215 will be located at a place other than the home office of the resulting bank.

A national bank resulting from a Riegle-Neal Act combination may continue, with OCC approval, to retain and operate, as a main office, any office of any bank that operated as such before the combination.

Meetings and Hearings

In general, the OCC relies on written information submitted during the comment period to reach a decision on an application. However, the OCC will consider obtaining information through other means if useful in reaching a decision.

The OCC may participate, upon request, in meetings with community organizations, or other members of the public to obtain information that will be useful in reaching a decision on an application. The OCC may arrange for either public or private meetings on an application, either upon receipt of a written request during the comment period for such a meeting or upon the OCC's initiative. The OCC will summarize and place in the official file for review by the official authorized to decide the application significant information obtained during the public or private meetings that its representatives attend.

A public meeting will be advertised and open to participation or observation by all members of the public. A public meeting may be warranted if it is necessary to contact those persons who have relevant information and if the OCC believes such a meeting would otherwise be in the public interest. One or more public meetings in various locations may be appropriate, for example, if two large, multistate banks propose to merge, and the OCC receives requests for public meetings from various parties in multiple locations raising multiple issues.

In a typical private meeting, an individual or group desires to have an OCC representative hear oral statements from members of the community about an applicant national bank's performance, and submits a written request for such a meeting to the OCC during the comment period. The OCC will try to arrange a private meeting or will seek to take information by telephone,

whenever it appears appropriate to obtain information that should be considered in the review of an application. Meetings may be held in OCC offices or at other sites as the OCC may deem appropriate, considering the financial means of the parties with whom the OCC intends to meet.

To help narrow issues or facilitate their resolution, the OCC will try to arrange a private meeting between representatives of the applicant and protestants at which OCC representatives are *not* present. Such meetings are not part of the official file for the application.

Nonconforming Assets and Activities

The OCC generally requires a national bank to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable period of time following the business combination. If the resulting bank desires to retain certain assets or continue particular activities permanently, and an issue arises of permissibility of the asset or activity for national banks, the application should contain an analysis of the legality of the assets or activities, including a legal opinion, if appropriate. If the resulting bank intends to retain nonconforming assets or continue nonconforming activities for only a limited time after consummation of the business combination to enable them to conform or discontinue without hardship, the applicant should provide information describing its plan to conform or divest/discontinue and an explanation of the reasonableness of the time periods involved.

Oaths of New Directors

The resulting national bank must furnish the OCC with executed Oaths of Directors for all new directors added as a result of a merger. In a consolidation, the resulting national bank must furnish the OCC with executed Oaths of Directors for all directors.

OCC Assessments

An applicant may wish to consider the OCC's semiannual assessment billing cycle to determine the consummation date of the business combination. The OCC's assessment is based on the assets on the books of national banks as of a June 30 or December 31 call report date and is for the six-month period after the call report date. For example, for any consummation date between July 1 and December 31, the resultant bank's first assessment will be based on its December 31 assets and will cover the first six months of the following year.

Other Legal Considerations

When the target institution is not a national bank, the application should include cites of applicable federal and state laws about the consolidation or merger. If the applicant believes that the proposed combination raises legal issues, it should provide an opinion from counsel that the proposal is not in contravention of law. Counsel should indicate that any action required by the applicable federal or state law has been or will be taken before consummation of the proposal. The OCC may request an opinion if one is not provided.

Resulting Bank Charter Number

In a transaction structured as a merger under 12 USC 215a or 215c and 12 CFR 5.33, the resulting bank generally uses the charter number of the acquiring bank. The OCC makes an exception to this rule when the acquiring bank is an interim national bank and the target is a national bank. In this case, the OCC permits the resulting bank to use the charter number of the target national bank. In a transaction structured as a consolidation under 12 USC 215 or 215c and 12 CFR 5.33, the resulting bank may use the charter number of any national bank involved in the transaction or a new charter number.

Shareholder Considerations

Proxies

In any combination involving shareholder approval, all shareholders must be informed adequately of all aspects of the transaction. Only banks registered under the Securities Exchange Act of 1934, subject to 12 CFR 11, must submit preliminary proxy materials or information statements to the OCC's Securities and Corporate Practices (SCP) Division before distribution to shareholders.

All proxy materials and information statements should point out that OCC approval or possible approval of the combination:

- Reflects only its view that the transaction does not contravene applicable competitive standards imposed by law and is consistent with regulatory policies relating to safety and soundness.
- Is not an OCC opinion that the proposed combination is financially favorable to the stockholders or that the OCC has considered the adequacy of the terms of the transaction.
- Is not an endorsement of or recommendation for the combination.

The last statement, because of its significance, ordinarily should appear in boldface or capital letters. The OCC encourages those applicants to submit the preliminary proxy materials and information statements for clearance as early as possible. All banks must submit a copy of the final proxy materials or information statements used for the combination to the appropriate district office at the same time they are sent to shareholders.

Timing Issues

If a bank has not printed its materials when it receives OCC approval of the combination, the proxy material or information statements should disclose the facts and circumstances surrounding the approval, usually in those portions dealing with regulatory matters. If the bank has printed its proxy material or information statements, but has not mailed them at the time it receives approval, it generally must include a supplementary letter or "sticker" containing the appropriate disclosures. Proxy material or information statements that are mailed before the bank receives OCC approval should indicate that the application has been filed and that the OCC's approval is necessary to consummate the transaction. But, the statement should state that, as of the date of the mailing, approval has not been granted.

If the OCC's approval is granted after the proxy material or information statement is mailed, but before the shareholders' meeting or vote, supplemental disclosures about the combination's approval, and a new proxy, if appropriate, should be sent to the shareholders. However, the bank may determine that failure to make such supplemental disclosures will not result in an untrue statement or omission of material fact under Securities Exchange Commission Rule 10b-5.

Shareholder Approval

The shareholder approval requirement for a merger or consolidation cannot be waived, even in an emergency. A merger or consolidation agreement must be approved by a two-thirds vote of the outstanding shares of each class of common stock of each institution. If one or more of the institutions is a state institution and the laws of that state require more than a two-thirds affirmative vote for ratification of the agreement, that vote must be obtained.

In purchase and assumption transactions, usually no shareholder vote is required for the acquiring or purchasing bank, unless the target is a national bank that will go into liquidation after or concurrent with the purchase and assumption, or state law requires it for a target state-chartered bank.

Shareholder Meetings

Notice of the shareholders' meetings to ratify merger or consolidation agreements must be published on the same day each week for four consecutive weeks in a newspaper of general circulation in the communities in which each institution's main office is located. Publication of notice to the national bank shareholders may be waived when the OCC determines that an emergency exists that justifies such waiver or by unanimous action of the national bank shareholders.

In addition, at least 10 days prior to the meeting, or earlier, the bank must mail, by certified or registered mail, a notice accompanied by a proxy or information statement to each shareholder, except those that specifically waive notice. Applicants should consult any laws and regulations governing institutions other than national banks for additional notice and publication requirements.

Shareholders might approve a combination agreement by unanimous consent, without holding a shareholders' meeting. Although the applicant must still publish notice of its application, it need not send notice of the meeting by publication or mail. The OCC will not certify consummation of a combination, until it receives the required secretary's certificate(s) for shareholders' approval or certified declaration(s) of unanimous consent from the holding company.

State Law Changes

When state laws are enacted or amended to permit a banking activity or facility previously prohibited or restricted by state law, the OCC accepts, but will not act on applications that rely on such state law changes prior to the law's effective date.

Systems Integration Considerations

National banks involved in a business combination should consider associated systems integration issues. These could include software compatibility or systems integration problems, hardware system failures, and potential "year 2000" problems. A bank that combines with another financial institution, even an affiliate, can exacerbate its transaction and reputation risk exposure, if it fails to identify systems compatibility and consolidation issues properly during its due diligence and merger planning efforts. Inadequate planning for a systems consolidation, or poor implementation, could result in increased cost, decreased revenues, loss of consumer confidence and, in a worst case, inability to operate or bank failure.

During the review of any business combination application, the OCC will consider the applicant's efforts to identify and manage systems integration issues. The OCC's assessment and degree of scrutiny will consider the applicant's track record of integrating acquisitions. Any business combination, in which systems integration concerns are identified, will be subject to additional review, which could warrant removal from expedited processing status. The OCC will access the applicant bank's financial and managerial ability and plans to remedy any system integration concerns. If, after careful evaluation, the systems integration problem represents a significant concern, the OCC may impose appropriate conditions, enforceable under 12 USC 1818, to address the concern. These could include requirements and time frames for specific remedial actions and specific measures for assessment and evaluation of the bank's systems integration progress. If the problem is sufficiently egregious, the OCC may deny the application.

Year 2000 Considerations

The OCC expects all national banks to have an action plan to address year 2000 systems issues. The OCC will consider those issues in deciding business combinations.

OCC Guidance

The OCC has issued the following advisory letters about year 2000 systems issues:

- [Advisory Letter 97-6](#) (AL 97-6), dated May 16, 1997, which outlines comprehensive guidance for banks to effect a year 2000 compliant system.
- [Advisory Letter 97-10](#) (AL 97-10), dated December 17, 1997, which outlines safety and soundness guidelines for year 2000 business risk.
- [Advisory Letter 98-1](#) (AL 98-1), dated January 20, 1998, which outlines OCC year 2000 expectations for year-2000-covered applications.

AL 97-6 established the following target time frames to accomplish critical actions for year 2000 compliance:

- September 30, 1997 — The bank should have identified affected applications and databases. Mission critical applications should be identified and an action plan set for year 2000 work.
- December 31, 1998 — Code enhancements and revisions, hardware upgrades, and other associated changes should be largely completed. In

addition, for mission critical applications, programming changes should be largely completed and testing should be well underway.

Between January 1, 1999 and the end of that year, the banks should be testing and implementing their year 2000 conversion programs.

Assessment of Year 2000 Compliance

Each business combination application must address compliance with [AL 97-6](#), [AL 97-10](#), [AL 98-1](#), and any other subsequent OCC year 2000 guidance. During the corporate review process, the Licensing staff will consult with the appropriate supervisory staff (i.e., portfolio manager, ADC, or BIS) to verify that the bank is on schedule with the target time frames of [AL 97-6](#) or subsequent guidance. For the most current guidance about year 2000 issues, refer to the OCC's Internet site, <http://www.occ.treas.gov>, or call the OCC Information Line (fax-on-demand service).

Deficiencies or Concerns

If an applicant selects a vendor that is not yet year 2000 ready, the OCC will determine whether the bank has sufficient due diligence in place to ensure that:

- The vendor has a year 2000 compliance plan.
- The vendor has sufficient resources (e.g., hardware, people, dollars) to complete its year 2000 conversion project within the time frames of [AL 97-6](#) or subsequent OCC year 2000 guidance.
- Bank management monitors its vendors' year 2000 conversion efforts and develops contingency plans, including trigger dates, for mission critical applications should vendor solutions or time frames prove inadequate.

The OCC will conduct additional reviews for any bank filing a business combination application that is not in compliance with the OCC's year 2000 guidelines, including the target time frames of [AL 97-6](#). At that time, the OCC:

- Will assess the applicant bank's financial and managerial ability.
- Will review its plans to remedy any year 2000 deficiencies.
- May remove the application from expedited review status.

- May impose appropriate conditions, enforceable under 12 USC 1818, to address year 2000 concerns if the problem represents a significant supervisory concern. Appropriate conditions could include:
 - Specific requirements and time frames for specific remedial actions.
 - Specific measures for assessment and evaluation of the bank's year 2000 status or progress.

The OCC may deny a filing if the problems represent a significant supervisory concern or if approval would be inconsistent with applicable law, regulation, or OCC policy.

Undercapitalized Banks

In processing a combination application from an undercapitalized bank, the OCC must determine that:

- The bank's capital restoration plan has been accepted by the OCC.
- The bank is implementing the plan.
- The proposed combination is consistent with and will further the plan's achievement.

Uninsured Depository Institutions

The FDIC must approve any combination with an uninsured institution that does not have BIF or SAIF insurance. When the resulting bank is a national bank, the OCC also must approve the transaction, if it is a merger under 12 USC 215a or a consolidation under 12 USC 215. The OCC requires a copy of the FDIC application and assurances of compliance with legal requirements covering publication, proxy or information statement, and shareholders' approval of the proposed combination. The OCC also reviews the combination for compliance with 12 CFR 5.33. (The OCC will rely on the application filed with the FDIC). A P&A transaction with an uninsured depository institution requires FDIC approval, but does not need that of the OCC, except authorization of additional branches acquired by a national bank. If branch approval is necessary, the OCC considers the business combination application sufficient.

Specific Filing Requirements

Bank Merger Competitive Review Process

An applicant may submit either the Merger Screen or an independently developed analysis of the competitive effects of a proposed business combination. The Merger Screen, however, speeds the competitive review process and reduces regulatory burden on the banking industry by identifying effectively those combinations that clearly do not have significant adverse competitive effects.

Parties planning a business combination are encouraged to consult the OCC and the DOJ before submitting an application, if the proposed combination raises anticompetitive concerns. A significant anticompetitive concern may often be resolved by agreement of the acquiring bank to make an appropriate divestiture. The DOJ seeks divestitures that will resolve the loss of competition in the market. A divestiture will resolve the problem if it ensures the presence of a strong and vigorous competitor that replaces the competition lost, because of the merger.

Merger Screen

The Merger Screen is divided into two screens—Screen A and Screen B (the Merger Screen is located in the Appendix). The OCC relies on Screen A, which looks at competition in predefined markets developed by the Federal Reserve banks. If the resulting bank's postmerger market share is less than 20 percent, or the calculation specified in Screen A does not result in a postmerger HHI over 1800 and an increase of more than 200, the OCC will not perform any further review unless a concern is raised by the DOJ or an outside party. If the result of the calculation specified in Screen A exceeds the 1800/200 threshold, applicants may consider providing additional information (see the "Additional Information" section later in this booklet for a description of the types of relevant information). Providing such information with a merger application can eliminate delays in review and may avoid special requests for additional information.

Department of Justice

The DOJ initially reviews transactions using Screen A. If a proposed merger exceeds the 1800/200 threshold in Screen A, applicants should consider submitting the calculations set forth in Screen B.²¹ In some cases, the DOJ

²¹In Screen B, applicants calculate another HHI using a slightly different geographic market and excluding thrift deposits when figuring out market shares. Often, the DOJ will review the information in Screen B and find no need to examine the proposed merger further.

may review transactions further that do not exceed the 1800/200 threshold in Screen A. This is most likely when Screen A does not reflect fully the competitive effects of the transaction in all relevant markets, in particular lending to small- and medium-sized businesses. For example, the DOJ is more likely to review a transaction involving two commercial banks, if the postmerger HHI approaches 1800 and the HHI increase nears 200, and Screen A includes thrifts that are not actively engaged in commercial lending. In addition, the DOJ is more likely to review a transaction if the predefined market in which the applicants compete is significantly larger than the area in which small business lending competition may exist (e.g., the predefined market includes multiple counties or is significantly larger than a Ranally Metropolitan Area (RMA), in which the applicants are located). In such a case, applicants should consider submitting the calculations set forth in Screen B.

If the calculation specified in Screen B results in an HHI over 1800 and an increase of over 200, applicants may consider providing additional information (refer to the "Additional Analysis" section later in this booklet). The submission of such information with a merger application can eliminate delays in the review process and avoid requests for additional information.

In some limited instances, the DOJ may examine a transaction in further detail, even though Screen A and Screen B do not identify anticompetitive problems. This is most likely to occur when it appears that:

- **The screens' market area does not fit the transaction.**—Sometimes the geographic market used in the screens may not be appropriate for analyzing the particular merger. For example, the screens' market area is a county, and one merging institution is at the east end of one county and the other merging institution is at the west end of the adjacent county. The institutions, in reality, may be each other's most important competitors, but the screens may not reflect that fact. The screens' market area may be quite large, but the merger involves two institutions at the center of the market. Institutions at the periphery of the market area may be improbable substitutes for the competition that would be lost in the transaction, and the transaction should be scrutinized in a narrower area to ensure that the relevant geographic market is considered.
- **Specialized products are involved.**—Sometimes the merging institutions are competitors for a specialized product and few of the them, included in the screen,s compete in offering that product. For example, the screens would not likely identify a concentrated market for working capital loans to medium-sized commercial customers, if the market area

has many institutions, but the merging institutions are two of only a few that compete for such business.

In such cases, applicants may wish to submit additional information with the business combination application that can minimize delays in the review process and avoid special requests for additional information. (Refer to the "Additional Information" section later in this booklet for a description of the types of relevant information.)

Additional Analysis

The DOJ and the OCC may examine a transaction in more detail if it exceeds the 1800/200 threshold of Screen A. The DOJ is also likely to examine the effect of a proposed merger on competition for commercial loans if the transaction exceeds the 1800/200 threshold in Screen B. When a transaction exceeds those thresholds, the applicant may present additional information not considered in the screen that may establish a clearer picture of competitive realities in the market. Such information may include evidence that:

- The merging parties do not significantly compete with one another.
- Rapid economic change has resulted in an outdated geographic market definition, and that an alternate market is more appropriate.
- Market shares are not an adequate indicator of the extent of competition in the market, such as signs:
 - That institutions in the market would be likely to expand current levels of commercial lending. Such evidence might include current loan-to-deposit ratios, recent hiring of new commercial loan officers, pending branch applications, or significant out-of-market resources that would be shifted into the market in response to new loan opportunities.
 - That evidence that a particular institution's market share overstates or understates its competitive significance (such as evidence that an institution is rapidly gaining or losing market share or that the institution is not competitively viable or is operating under regulatory restrictions on its activities).
 - Of entry conditions, including evidence of entry by institutions within the last two years and the growth of those institutions that have entered; evidence of likely entry within the next two years, such as pending branch applications; and expectations about potential entry by institutions not now in the market area and the

reasons for such expectations, including legal requirements for entry.

When the threshold in Screen B is exceeded, applicants may consider preparing a HHI worksheet for the market area using, instead of deposits, data from the relevant Reports of Condition on commercial and industrial loans below \$250,000 and between \$250,000 and \$1,000,000. Such information can be a useful assessment of actual competition for small business lending.²²

Additional information that may be relevant includes evidence of competition from sources not included in Screen B, such as signs:

- That a thrift institution is actively engaged in providing services to commercial customers, particularly loans for business startup or working capital purposes and cash management services.
- That a credit union has such membership restrictions, or lack of restrictions, and offers such services to commercial customers that it should be considered to be in the market.
- Of actual competition by out-of-market institutions for commercial customers, particularly competition for loans for business startup or working capital.
- Of actual competition by nonbank institutions for commercial customers, particularly competition for loans for business startup or working capital.

Any applicant that believes that Screen B does not accurately reflect market concentration and competitive realities in a particular area is encouraged to submit additional information explaining the reasons for its opinion. This information should include an HHI worksheet, which indicates the geographical area that should be covered, the institutions that should be included, the method of calculating the market share of each institution (e.g., deposits, branches, loans), and the reasons why this information is a more accurate determinant of market concentration. Inclusion of institutions outside the areas identified in Screen B should be supported by evidence of actual competition by those institutions. Such alternative worksheets should be submitted in addition to, rather than in lieu of, the HHI worksheets from Screens A and B.

²²In preparing such a market share table, parties may estimate another institution's commercial lending in a given market by multiplying its overall ratio of commercial loans to deposits by its deposits in the relevant market, if market-specific information about that institution is unavailable. Applicants should indicate which figures are actual and which are estimates.

Independent Competitive Analysis

If an applicant believes that the markets specified in the Merger Screen are not applicable, it may submit an independent competitive analysis. Under this option, the applicant determines the primary service area and defines the relevant geographic market using realistic limits, so that the effect of the merger upon competition can be analyzed. The applicant might find the use of ZIP Code analysis, which is based on factual data, effective in determining the primary service area, (e.g., the geographic area in which the target's branch office receives 75 percent of its deposits). The applicant should define the relevant geographic market to encompass an area where the effect upon competition will be direct and immediate.

The OCC recognizes that different banking services may have different relevant geographic markets. Although the largest borrowers and depositors may find it convenient and practical to conduct part of their banking business outside the relevant geographic market, the applicant should not define the market so expansively as to increase the number of competitors and cause the competitive effect of the combination to seem insignificant. Conversely, the applicant should not define the market so narrowly as to place competitors in different markets, because only the smallest customers are considered. A fair definition of the relevant geographic market should consider the target bank's primary service area.

After the relevant geographic market has been defined, the applicant should determine the competitive effects of the proposed business combination by calculating the HHI index based on the newly defined markets. The OCC will consider both the definition of the market and the intensity of competition within it. To measure intensity of competition, the OCC will consider the number of competitors in the market (including nonbank and nonlocal competitors), services offered, pricing of services, advertising, office hours, and banking innovations.

Branch and Subsidiary Authorization

The OCC will issue authorization letters following consummation of the transaction for all legal branches that have not been approved by the OCC prior to the transaction. The authorizations will cover all main offices of the combining institutions (except the resulting bank's main office) and all existing branch offices (brick and mortar branches and other types of facilities that meet the definition of a branch under national banking laws) of the acquired institutions that are not national banks. When the acquired bank is a national bank, its branches may be retained by the acquiring bank when legally permissible without additional authorization. The applicant will not need to list the target national bank branches in the business combination application.

Banks may retain approved, but unopened branches, as permitted under 12 USC 36 and applicable state law, if they received all required approvals for those branches prior to the transaction. The application should include a list of all those branch sites of acquired institutions other than national banks. Banks should be aware of the 18-month expiration period affecting approved, but unopened, branches.

If the combination involves the retention of nonconforming assets or activities that the applicant may not be permitted to retain under relevant law or regulation, the applicant should include with its application a list of all such assets or activities, including the method of and anticipated time period for divestiture or disposal. The applicant does not need to provide this information for activities or assets it will dispose of prior to consummation.

Fiduciary Powers

Applicants may request to exercise fiduciary powers in the business combination application. If either bank has existing powers, the applicant should state whether the resulting bank intends to exercise such powers according to 12 CFR 5.26(b)(1) or (2).

Some banking companies prefer to conduct fiduciary activities in a separate trust bank, rather than in a trust department of a commercial bank. In addition, some banking companies may offer, or plan to offer, fiduciary services at locations at which they do not have a commercial bank, or a branch of a commercial bank. (See the "[Fiduciary Powers](#)" booklet for additional information.)

Investment in Bank Premises

A national bank may invest in bank premises in an aggregate amount less than or equal to the bank's capital stock without prior OCC approval or after-the-fact notice. If the bank is well capitalized and has a CAMELS rating of 1 or 2, it may invest in bank premises in an aggregate amount of 150 percent or less of the bank's capital and surplus, provided the bank gives the OCC notice within 30 days thereafter. (See the "[Investment in Bank Premises](#)" booklet for additional information.)

BUSINESS COMBINATION APPLICATION CHECKLIST AND COMMUNITY REINVESTMENT COMMITMENTS

Checklist of Attached Information

- ☐ Format of Submission
 - ☐ Interagency Bank Merger Act Application or
 - ☐ Business Combination Application—Streamlined
 - ☐ Complete paper submission or ☐ combination paper and 3½ inch diskette submission. If the latter, the following should also be included: (1) a 3½ inch diskette; (2) a cover letter identifying the filer, the filing, the filename on the diskette, and the word processing program used; and (3) any original page(s) of the application or attachments requiring signatures.
- ☐ Copy of (a) the executed merger or transaction agreement, including any amendments, (b) any board of directors' resolutions related to the transaction, and (c) interim charter's Articles of Association, names of organizers, and related documents, if applicable.
- ☐ Request for confidentiality, if applicable
- ☐ Other corporate requests
- ☐ Filing fee

Specific Information for Streamlined Application (as appropriate)

- A. ☐ Authority for Filing Streamlined Submission
- B. ☐ Business Combination Application—Streamlined
 - ☐ List of branches that require branch authorization
- C. ☐ CRA Commitments
- D. ☐ Merger Screen

Specific Information for Standard Interagency Bank Merger Application (as appropriate)

- A. ☐ Interagency Bank Merger Act Application
 - ☐ Financial Information
 - ☐ Pro Forma Balance Sheet
 - ☐ Projected Combined Statement of Income
 - ☐ Pro Forma and Projected Regulatory Capital Schedule
 - ☐ List of Directors and Senior Executive Officers of the Resultant Institution
 - ☐ List of Branches that Require Branch Authorization
- B. ☐ CRA Commitments
- C. ☐ Merger Screen

Desired Action Date

I/we desire OCC action on this application no later than **(date)**. I hereby certify that the bank's board of directors, by resolution, has authorized the filing of this application, and that to the best of my knowledge, it contains no misrepresentations or omissions of material facts. In addition, I agree to notify the OCC if the facts described in the filing materially change prior to receiving a decision.

Checklist Questions

Community Reinvestment Commitments

An applicant completing either the *Interagency Bank Merger Act Application* or the *Business Combination Application—Streamlined* must respond to the following two questions and, if applicable, provide the requested information.

1. Have any of the combining institutions entered into commitments with community organizations, civic associations, or similar entities to provide banking services to the community?

Yes ☐ No ☐

If the answer is yes, describe the commitment.
2. Will the resulting bank assume all the commitments described in the previous question?

Yes ☐ No ☐

If the answer is no, explain the reasons and describe the impact on the communities to be affected.

Competitive Factors - Removal from Expedited Processing

Although an application may initially qualify for expedited processing, it could be removed from expedited processing if there are competitive issues that warrant additional review. Each applicant that submits a Competitive Analysis for an unaffiliated business combination must answer the following questions:

1. Does the HHI for any relevant banking market increase by more than 200 points with a post-acquisition HHI of at least 1800?

Yes ☐ No ☐
2. Excluding markets in which the acquiring bank has 35 percent or more of the deposits, will the resulting bank have greater than 35 percent of the deposits in a relevant market?

Yes ☐ No ☐

A yes answer for either question indicates the application will be removed from expedited processing for additional competitive review.

BUSINESS COMBINATION APPLICATION—STREAMLINED

Background

The OCC has an expedited review process available to national banks that meet the definition of an “eligible bank” under 12 CFR 5.3(g). For this purpose, an “eligible bank” is a national bank that meets the following criteria: (1) it is “well capitalized” as defined in 12 CFR 6.4(b)(1); (2) it has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS); (3) it has a CRA rating of “Outstanding” or “Satisfactory;” and, (4) it is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive. An “eligible depository institution” is a state bank or federal or state thrift that meets the same criteria. Applications that meet the expedited review criteria can qualify for a streamlined submission, instead of the Interagency submission.

Each applicant will file the Interagency Bank Merger Act Application unless it qualifies for a streamlined submission. An applicant may qualify to submit a streamlined business combination application, if the transaction is a “business reorganization” or a “qualifying business combination.”

A “business reorganization” means either:

- (i) a business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company, or that will be controlled by the same holding company prior to the date of the combination; or
- (ii) a business combination between an eligible bank and an interim bank chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank for those of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank (except for changes in interests resulting from the exercise of dissenters’ rights), and the reorganization involves no other transactions involving the bank.

A “qualifying business combination” is a transaction in which:

- (i) At least one party to the transaction is an eligible bank, and all other parties to the transaction are eligible banks or eligible depository institutions, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the combined total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank, as reported in each institution’s Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application;
- (ii) The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application;¹ or
- (iii) The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting bank will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in each institution’s Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

Authority for Filing Streamlined Submission

Check the following boxes to certify the appropriateness of a streamlined submission. [NOTE: One or more boxes must be checked to qualify for a streamlined submission. Otherwise, a complete “Interagency Bank Merger Act Application” is required.]

¹Use of a streamlined application under this standard (ii) is not available for a transaction that exceeds the size test in the immediately preceding standard (i).

- ☐ 1. The transaction is a business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company, or that will be controlled by the same holding company prior to the date of the combination.
- ☐ 2. The transaction is a business combination between an eligible bank and an interim bank chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank (except for changes in interests resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank.
- ☐ 3. At least one party to the transaction is an eligible bank, and all other parties to the transaction are eligible banks or eligible depository institutions, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the total assets of the target institutions combined are no more than 50 percent of the total assets of the acquiring bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.
- ☐ 4. The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application.²
- ☐ 5. The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting bank will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

If one or more boxes were checked, the applicant should proceed to complete this application. Otherwise, the applicant must complete the Interagency Bank Merger Application.

General Information and Instructions

Preparation and Use

This application is used for a merger, consolidation, or other combining transaction between nonaffiliated parties and to effect a corporate reorganization between affiliated parties (affiliate transactions).

An affiliate transaction refers to a merger, consolidation, other combination, or transfer of any deposit liabilities between depository institutions that are controlled or that will be controlled by the same holding company. It includes a business combination between a depository institution and an affiliated interim institution. Applicants proposing affiliate transactions are not required to complete questions 9 through 11 of this form.

All questions must be answered with complete and accurate information that is subject to verification. If the answer is "none," "not applicable," or "unknown," so state. Answers of "unknown" should be explained. The questions in the application are not intended to limit the applicant's presentation nor to duplicate information supplied on another form or in an exhibit. For such information, a cross reference to the information is acceptable. Supporting information for all relevant factors, setting forth the basis for applicant's conclusions, should accompany the application. The OCC may request additional information. Provide the approximate approval date needed to consummate the transaction.

For additional information on the processing procedures and guidelines and any supplemental information that may be required, please refer to the appropriate regulatory agency's procedural guidelines (i.e., *Comptroller's Corporate Manual*, the FDIC's Rules and Regulations [12 CFR 303] and Statement of Policy on Bank Merger Transactions, or the OTS' *Application Processing Handbook*) or contact the agency directly for specific instruction.

Insurance Fund Conversions and Oakar Transactions

²Approval of the use of the streamlined process by the district office under standard 4 may not be used for a transaction that exceeds the size test in standard 3.

With the prior approval of the FDIC, Section 5(d)(2) of the FDIA (12 USC 1815(d)(2)) allows an insured depository institution to convert from a Bank Insurance Fund (BIF) or Savings Association Insurance Fund (SAIF) member or from a SAIF to a BIF member. Insurance fund exit and entry fees apply.

Section 5(d)(3) of the FDIA (12 USC 1815(d)(3)), pertaining to Oakar transactions, permits a direct merger or a purchase and assumption transaction by which a member of BIF or SAIF assumes deposits insured by the other insurance fund subject to the satisfaction of certain conditions. If applying for approval of a transaction covered by either section 5(d)(2) or 5(d)(3), check the appropriate box on page 1 of this form.

Interim Charters and Federal Deposit Insurance

An interim state or federal depository institution charter may be used to facilitate a merger or consolidation. An interim institution is one that does not operate independently, but exists, usually for a short period of time, solely as a vehicle to accomplish a combination (for example, to facilitate the acquisition of 100 percent of the voting shares of an existing depository institution). The processing procedures and guidelines for chartering an interim institution may be found in the guidelines of the appropriate regulatory agency.

Applicants should contact the FDIC to discuss relevant deposit insurance requirements. An application for deposit insurance is not required for a merger between a federally chartered interim institution and an existing FDIC-insured depository institution, including those instances in which the resulting institution will operate under the charter of the federal interim. However, an application for deposit insurance is required if state-chartered interim bank or savings association will be insured. Mergers between an FDIC-insured institution and a noninsured institution are subject to FDIC approval under section 18(c)(1) of the FDIA (12 USC 1828(c)(1)).

In making its determination to grant deposit insurance under section 5(a) of the FDIA (12 USC 1815(a)), the FDIC will consider the factors enumerated in section 6 of the FDIA (12 USC 1816). If applying for deposit insurance under section 5(a), check the appropriate boxes on the top of page 1 of this form and include with this application any additional relevant information.

Establishment of Branches and Branch Closings

This business combination application will be deemed to constitute an application pursuant to 12 CFR 5.30 and 12 USC 36 to establish and maintain the branches listed in the application. If a branch is closed as a result of a merger, consolidation, or other combination, refer to the Interagency Policy Statement on Branch Closings dated and applicable law for branch closure notice requirements (12 USC 1831r-1). The Joint Agency Policy Statement on [Branch Closings](#) can be found in the Appendix of the [Branch Closings](#) booklet.

Notice of Publication

An applicant must publish notice of the proposed acquisition in a newspaper of general circulation in the community or communities in which the main office of each of the parties to the transaction is located (see, as appropriate, 12 USC 1828(c)(3), 12 USC 215 or 215a, 12 CFR 5.33(f) or 5.8).

Confidentiality

In general, requests for confidential treatment of specific portions of the application must be submitted in writing concurrently with the application and must discuss the justification for the requested treatment. Applicant's reasons for requesting confidentiality should specifically demonstrate the harm (e.g., to its competitive position, invasion of privacy) that would result from the public release of information (5 USC 552). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and (3) labeled "Confidential." Applicant should follow the same procedure for a request for confidential treatment in the subsequent filing of supplemental information to the application.

An applicant should contact the OCC for specific instructions on requests for confidential treatment. The appropriate regulatory agency will determine whether the information submitted as confidential will be so regarded and will advise the applicant of any decision to make available to the public information labeled as "Confidential."

BUSINESS COMBINATION APPLICATION—STREAMLINED

Check all that apply:

Type of Filing	Form of Transaction	Filed Pursuant To
<input type="checkbox"/> Affiliate/Business Reorganization	<input type="checkbox"/> Merger	<input type="checkbox"/> Section 18(c), FDIA
<input type="checkbox"/> Combination with Interim Depository Institution	<input type="checkbox"/> Consolidation	<input type="checkbox"/> Section 5(d)(2), FDIA
<input type="checkbox"/> Nonaffiliate Combination	<input type="checkbox"/> Purchase and Assumption	<input type="checkbox"/> Section 5(d)(3), FDIA
<input type="checkbox"/> Other _____	<input type="checkbox"/> Purchase of Assets Only	<input type="checkbox"/> 12 USC 215, 215a
	<input type="checkbox"/> Other _____	<input type="checkbox"/> 12 CFR 5.33

Applicant Depository Institution

Name Charter/Docket Number

Street

City State ZIP Code

Target Institution

Name Charter/Docket Number

Street

City State ZIP Code

Resultant Institution (if different than Applicant)

Name Charter/Docket Number

Street

City State ZIP Code

Contact Person

Name Title/Employer

Street

City State ZIP Code

Telephone Number Fax Number

BUSINESS COMBINATION APPLICATION—STREAMLINED

1. Are there any material aspects of the transaction (e.g., financing arrangements) that are not reflected in the agreement, or are there any features (e.g., structure and significant terms and conditions) that are not customary or usual in the agreement? Yes ☐ No ☐
If the answer is yes, explain.
2. Are there any issues regarding the permissibility under applicable state or federal laws or regulations of the proposed transaction (e.g., nonbank activities, branching, qualified thrift lender's test)? Yes ☐ No ☐
If the answer is yes, describe the issues.
3. Will the applicant or resultant institution retain any nonconforming or impermissible assets or activities? Yes ☐ No ☐
If the answer is yes, describe them, including the method of and anticipated time period for divestiture or disposal (do not discuss those that will be disposed of prior to consummation.)
4. Will there be any anticipated and significant changes in products or services, including fees associated with them that would result from the consummation of the proposed transaction? Yes ☐ No ☐
If the answer is yes, list those changes. If any services or products will be discontinued or fees increased, describe and explain reasons.
- 5a. Will the proposed transaction affect the Community Reinvestment Act (CRA) statement or assessment area, as applicable, served by the applicant or resulting institution? Yes ☐ No ☐
If the answer is yes, discuss the effect.
- 5b. At its most recent federal regulatory examination, did any of the combining institutions receive a CRA rating of "needs to improve" or "substantial noncompliance" institution-wide, or where applicable in a state or a multi-state MSA, or receive an evaluation of less than satisfactory performance in an MSA or in the non-MSA portion of a state in which the acquiring bank is expanding as a result of the consolidation? Yes ☐ No ☐
If the answer is yes, describe what actions, if any, have been taken to redress deficiencies in the institution's CRA record of performance since the examination.
6. Is the transaction subject to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994? Yes ☐ No ☐
If the answer is yes, discuss authority; compliance with state age limits and host state(s) filing requirements; and applicability of nationwide and statewide concentration limits. In addition, discuss any other restrictions that the states seek to apply (including state antitrust restrictions).
7. Will any banking offices: (a) be established or retained as branches, including the main office, and branches of the target institution; (b) be approved, but unopened branch(es) of the target institution, including the date the current federal and state agencies granted approval(s); (c) be existing branches that will be closed as a result of the proposal and indicate the effect on the branch customers served; and, (d) be retained as branches in the applicant's original home state in the event the applicant is relocating its main office to another state. Yes ☐ No ☐
If the answer is yes, provide the popular name, street address, city, county, state, and ZIP Code for each location.

A nonaffiliate transaction also must complete items 8 through 10.

8. Will the proposed transaction have an adverse effect on existing competition in the relevant geographic market(s) where applicant and target institution operate? Applicant should contact the appropriate regulatory agency for specific instructions to complete the competitive analysis. Yes ☐ No ☐
If the answer is yes, discuss the effect.

BUSINESS COMBINATION APPLICATION—STREAMLINED

9. Will the proposed transaction involve a branch sale or any other divestiture of all or any portion of the bank, savings association, or nonbank company, or any other action to mitigate competitive effects? Yes ☐ No ☐

If the answer is yes, discuss the timing of the branch sale or divestiture, purchaser, and other specific information.

10. Will any management interlocking relationships (12 USC 3201-3208) exist following consummation? Yes ☐ No ☐

If the answer is yes, describe the management interlocking relationship, including a discussion of the permissibility of the interlock with regard to relevant laws and regulations.

CERTIFICATION

We hereby certify that our board of directors, by resolution, has authorized the filing of this application, and that to the best of our knowledge, it contains no misrepresentations or omissions of material facts. In addition, we agree to notify the agency if the facts described in the filing materially change prior to receiving a decision or prior to consummation. Any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject us to legal sanctions provided by 18 USC 1001 and 1007.

Signed this _____ day of _____, _____.

_____ by
(Applicant)

(Signature of Authorized Officer)¹

(Typed Name)

(Title)

_____ by
(Target)

(Signature of Authorized Officer)¹

(Typed Name)

(Title)

¹In multiple-step combinations, applicants should ensure that authorized officers of the combining institutions sign.

INTERAGENCY BANK MERGER ACT APPLICATION

Public reporting burden for this collection of information is estimated to average 30 and 18 hours for nonaffiliate and affiliate transactions, respectively, including the time to gather and maintain data in the required form, to review instructions, and to complete the information collection. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429; Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551; Licensing Policy and Systems Division, Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219; or Corporate Activities Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

An organization or a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

GENERAL INFORMATION AND INSTRUCTIONS

Preparation and Use

This application is used to effect a transaction under section 18(c) of the Federal Deposit Insurance Act (FDIA), as amended (12 USC 1828(c) and for national banks, 12 USC 215, 215a). This application is used for a merger, consolidation, or other combining transaction between nonaffiliated parties as well as to effect a corporate reorganization between affiliated parties (affiliate transactions).

An affiliate transaction refers to a merger, consolidation, other combination, or transfer of any deposit liabilities, between depository institutions that are controlled or that will be controlled by the same holding. It includes a business combination between a depository institution and an affiliated interim institution. Applicants proposing affiliate transactions are not required to complete questions 11 through 13 of this form.

All questions must be answered with complete and accurate information that is subject to verification. If the answer is "none," "not applicable," or "unknown," so state. Answers of "unknown" should be explained. The questions in the application are not intended to limit the applicant's presentation nor are the questions intended to duplicate information supplied on another form or in an exhibit. For such information, a cross reference to the information is acceptable. Supporting information for all relevant factors, setting forth the basis for applicant's conclusions, should accompany the application. The regulatory agency may request additional information. Provide the approximate approval date needed to consummate.

For additional information regarding the processing procedures and guidelines, please refer to the appropriate regulatory agency's procedural guidelines (i.e., *Comptroller's Corporate Manual*, the FDIC's Rules and Regulations [12 CFR 303] and Statement of Policy on Bank Merger Transactions, or the OTS' *Application Processing Handbook*) or contact the agency directly for specific instruction.

Insurance Fund Conversions and Oakar Transactions

With the prior approval of the FDIC, section 5(d)(2) of the FDIA (12 USC 1815(d)(2)) allows an insured depository institution to convert from a Bank Insurance Fund (BIF) or Savings Association Insurance Fund (SAIF) member or from a SAIF to a BIF member. Insurance fund exit and entry fees apply.

Section 5(d)(3) of the FDIA (12 USC 1815(d)(3)), pertaining to Oakar transactions, permits a direct merger or a purchase and assumption transaction by which a member of BIF or SAIF assumes deposits insured by the other insurance fund subject to the satisfaction of certain conditions.

If applying for approval of a transaction covered by either section 5(d)(2) or 5(d)(3), check the appropriate box on of this form.

Interim Charters and Federal Deposit Insurance

An interim state or federal depository institution charter may be used to facilitate a merger or consolidation. An interim institution is one that does not operate independently, but exists, usually for a short period of time, solely as a vehicle to accomplish a combination (for example, to facilitate the acquisition of 100 percent of the voting shares of an existing depository institution). The processing procedures and guidelines for chartering an interim institution may be found in the guidelines of the appropriate regulatory agency.

Applicants should contact the FDIC to discuss relevant deposit insurance requirements. An application for deposit insurance is not required for a merger between a federally chartered interim institution and an existing FDIC-insured depository institution, including those instances in which the resulting institution will operate under the charter of the federal interim. However, an application for deposit insurance is required if state-chartered interim bank or savings association will be insured. Mergers between an FDIC-insured institution and a noninsured institution are subject to FDIC approval under section 18(c)(1) of the FDIA (12 USC 1828(c)(1)).

In making its determination to grant deposit insurance under section 5(a) of the FDIA (12 USC 1815(a)), the FDIC will consider the factors enumerated in section 6 of the FDIA (12 USC 1816). If applying for deposit insurance under section 5(a), check the appropriate boxes on the top of page 1 of this form and include with this application any additional relevant information.

Establishment of Branches and Branch Closings

This Interagency Bank Merger Act Application will be deemed to constitute an application pursuant to section 9 of the Federal Reserve Act (12 USC 321) in the case of state member banks, and an application pursuant to section 18(d) of the FDIA (12 USC 1828(d)) for other state-chartered banks, to establish the branches listed in the application.

If a branch is closed as a result of a merger, consolidation, or other combination, refer to the Interagency Policy Statement on [Branch Closings](#) and applicable law for branch closure notice requirements (12 USC 1831r-1).

Notice of Publication

An applicant must publish notice of the proposed acquisition in a newspaper of general circulation in the community or communities in which the main office of each of the parties to the transaction is located (12 USC 1828(c)(3)). Contact the appropriate regulatory agency for the specific requirements of the notice of publication.

Confidentiality

In general, requests for confidential treatment of specific portions of the application must be submitted in writing concurrently with the submission of the application and must discuss the justification for the requested treatment. Applicant's reasons for requesting confidentiality should specifically demonstrate the harm (e.g., to its competitive position, invasion of privacy) that would result from public release of information (5 USC 552). Information for which confidential treatment is requested should be: (1) specifically identified in the public portion of the application (by reference to the confidential section); (2) separately bound; and, (3) labeled "Confidential." Applicant should follow the same procedure for a request for confidential treatment for the subsequent filing of supplemental information to the application.

An applicant should contact the appropriate regulatory agency for specific instructions for requests for confidential treatment. The appropriate regulatory agency will determine whether the information submitted as confidential will be so regarded and will advise the applicant of any decision to make available to the public information labeled as "Confidential."

INTERAGENCY BANK MERGER ACT APPLICATION

Check all that apply:

Type of Filing	Form of Transaction	Filed Pursuant To
<input type="checkbox"/> Affiliate/Corporate Reorganization	<input type="checkbox"/> Merger	<input type="checkbox"/> Section 18(c), FDIA
<input type="checkbox"/> Combination with Interim Depository Institution	<input type="checkbox"/> Consolidation	<input type="checkbox"/> Section 5(d)(2), FDIA
<input type="checkbox"/> Nonaffiliate Combination	<input type="checkbox"/> Purchase and Assumption	<input type="checkbox"/> Section 5(d)(3), FDIA
<input type="checkbox"/> Other _____	<input type="checkbox"/> Branch Purchase and Assumption	<input type="checkbox"/> 12 USC 215, 215a
	<input type="checkbox"/> Other _____	<input type="checkbox"/> Section 5(a), FDIA
		<input type="checkbox"/> Other _____

Applicant Depository Institution

Name
Charter/Docket Number

Street

City State ZIP Code

Target Institution

Name
Charter/Docket Number

Street

City State ZIP Code

Resultant Institution (if different than Applicant)

Name Charter/Docket Number

Street

City State ZIP Code

Contact Person

Name Title/Employer

Street

City State ZIP Code

Telephone Number Fax Number

INTERAGENCY BANK MERGER ACT APPLICATION

1. Describe the transaction's purpose, structure, significant terms and conditions, and financing arrangements, including any plan to raise additional equity or incur debt.
2. Provide a copy of: (a) the executed merger or transaction agreement, including any amendments; (b) any board of directors' resolutions related to the transaction; and, (c) interim charter, names of organizers, and related documents, if applicable.
3. Describe any issues of permissibility under applicable state or federal laws or regulations of the proposal (e.g., nonbank activities, branching, qualified thrift lender's test).
4. Describe any nonconforming or impermissible assets or activities that the applicant or resultant institution may not be permitted to retain under relevant law or regulation, including the method of and anticipated time period for divestiture or disposal.
5. Provide the indicated financial information and describe the assumptions used to prepare the projected statements, including those about the effect of the merger transaction. Material changes between the date of the financial statements and the date of the application should be disclosed. If there are no material changes, a statement to that effect should be made.
 - a. Pro Forma Balance Sheet, as of the end of the most recent quarter and for the first year of operation after the transaction. Indicate separately for the applicant and target institution each principal group of assets, liabilities, and capital accounts; debit and credit adjustments (explained by footnotes), reflecting the proposed acquisition; and the resulting pro forma combined balance sheet. Goodwill and all other intangible assets should be listed separately on the balance sheet. Indicate the amortization period and method used for any intangible asset and the accretion period of any purchase discount on the balance sheet.
 - b. Projected Combined Statement of Income for the first year of operation following consummation.
 - c. Pro Forma and Projected Regulatory Capital Schedule, as of the end of the most recent quarter and for the first year of operation, indicating:
 - Each component item for Tier 1 (Core) and Tier 2 (Supplementary) Capital, Subtotal for Tier 1 and Tier 2 Capital (less any investment in unconsolidated or nonincludable subsidiaries), Total Capital.
 - Total risk-weighted assets.
 - Capital Ratios: (1) Tier 1 capital to total risk-weighted assets; (2) Total capital to total risk-weighted assets; and (3) Tier 1 capital to average total consolidated assets (leverage ratio).
6. List the directors and senior executive officers of the resultant institution and provide the name, address, position with, and shares held in that institution or holding company, and principal occupation (if a director).
7. For the combining institutions, list any significant anticipated changes in services or products that will result from the consummation of the transaction. If any services or products will be discontinued or fees increased, describe and explain the reasons.
8. Discuss the effect of the proposed transaction on the Community Reinvestment Act (CRA) assessment area served by the applicant or resultant institution, including lending, investments, and services. Include a copy of the description of the assessment area, if adjusted. For the applicant or target that has received a CRA composite rating of "needs to improve" or "substantial noncompliance" institution-wide or where applicable in a state or a multistate MSA, or has received an evaluation of less than satisfactory performance in an MSA or in the non-MSA portion of a state in which the applicant is expanding as a result of the combination, describe the specific actions, if any, that have been taken to address the deficiencies in the institution's CRA performance record since the examination.
9. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 imposes additional considerations for certain interstate mergers between insured banks. Savings associations are not subject to 12 USC 1831u. If subject to those provisions, discuss authority; compliance with state age limits and host state(s) filing requirements; and applicability of nationwide and statewide concentration limits. In addition, discuss any other restrictions that the states seek to apply, including state antitrust restrictions.
10. List all offices that: (a) will be established or retained as branches, including the main office, of the target institution; (b) are approved, but unopened branch(es) of the target institution, including the date the current

federal and state agencies granted approval(s); (c) are existing branches that will be closed as a result of the proposal and indicate the effect on the branch customers served; and, (d) are being retained as branches in the applicant's original home state in the event the applicant is relocating its main office to another state. For each branch, list the popular name, street address, city, county, state, and ZIP Code.

A nonaffiliate transaction also must reply to items 11 through 13.

11. Discuss the effects of the proposed transaction on existing competition in the relevant geographic market(s) where applicant and target institution operate. Applicant should contact the appropriate regulatory agency for specific instructions to complete the competitive analysis.
12. If the proposed transaction involves a branch sale or any other divestiture of all or any portion of the bank, savings association, or nonbank company to mitigate competitive effects, discuss the timing, purchaser, and other specific information.
13. Describe any management interlocking relationships (12 USC 3201-3208) that currently exist or would exist following consummation. Include a discussion of the permissibility of the interlock for relevant laws and regulations.

CERTIFICATION

We hereby certify that our board of directors, by resolution, has authorized the filing of this application, and that to the best of our knowledge, it contains no misrepresentations or omissions of material facts. In addition, we agree to notify the agency if the facts described in the filing materially change prior to receiving a decision or prior to consummation. Any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject us to legal sanctions provided by 18 USC 1001 and 1007.

Signed this _____ day of _____, _____.

_____ by
(Applicant)

(Signature of Authorized Officer)

(Typed Name)

(Title)

_____ by
(Target)

(Signature of Authorized Officer)¹

(Typed Name)

(Title)

¹In multiple-step combinations, applicants should ensure that authorized officers of the combining institutions sign.

**COMPTROLLER OF THE CURRENCY
OFFICE OF THRIFT SUPERVISION**

SUPPLEMENT TO INTERAGENCY BANK MERGER ACT APPLICATION

All OCC and OTS applicants should provide the following supplemental information with their application:

14. If any of the combining institutions have entered into commitments with community organizations, civic associations, or similar entities concerning providing banking services to the community, describe the commitment.
15. If the resultant institution will not assume the obligations entered into by the target institution, explain the reasons and describe the impact on the communities to be affected.

If filing with the OTS:

16. Provide the information to satisfy the requirements of 12 CFR 563.22(d)(1)(vi).

Pro Forma Combined Balance Sheet

If the application qualifies for streamlined submission, do not submit this schedule.

This schedule reflects the pro forma combined balance sheet after adjustments for the latest Report of Condition as of (month and year). All entries in the adjustment column must be footnoted and explained in the accounting discussion. Information should be provided in separate columns for each target institution participating in the merger.

	<i>Acquiring Bank</i>	<i>Target Bank</i>	<i>Adjust- ments</i>	<i>Resulting Pro- Forma</i>
ASSETS				
Cash and due from banks	\$_____	\$_____	\$_____	\$_____
U.S. government and agencies	_____	_____	_____	_____
State and municipal obligations	_____	_____	_____	_____
Other securities	_____	_____	_____	_____
Federal funds sold and securities purchased under agreement to resell	_____	_____	_____	_____
Loans (net of unearned income)	_____	_____	_____	_____
Less: Allowance for loan and lease losses	_____	_____	_____	_____
Bank premises	_____	_____	_____	_____
Furniture, fixtures, and equipment	_____	_____	_____	_____
Intangible assets*	_____	_____	_____	_____
Other assets*	_____	_____	_____	_____
Total assets	\$=====	\$=====	\$=====	\$=====

* Itemize any amount that exceeds 10 percent of the total.

	<i>Acquiring Bank</i>	<i>Target Bank</i>	<i>Resulting Adjust- ments</i>	<i>Pro- Forma</i>
Liabilities				
Demand deposits	\$ _____	\$ _____	\$ _____	\$ _____
Time deposits	_____	_____	_____	_____
Total deposits	\$ _____	\$ _____	\$ _____	\$ _____
Interest, taxes and other liabilities	_____	_____	_____	_____
Federal funds purchased and securities sold under agreements to repurchase	_____	_____	_____	_____
Liabilities for borrowed money	_____	_____	_____	_____
Other liabilities*	_____	_____	_____	_____
Total liabilities	\$ _____	\$ _____	\$ _____	\$ _____
CAPITAL				
Subordinated notes and debentures	\$ _____	\$ _____	\$ _____	\$ _____
Stockholders' equity:				
Preferred stock	_____	_____	_____	_____
Common stock	_____	_____	_____	_____
Surplus	_____	_____	_____	_____
Retained profits	_____	_____	_____	_____
Other capital and contingency reserves	_____	_____	_____	_____
Total equity capital	\$ _____	\$ _____	\$ _____	\$ _____
Total liabilities and equity capital	\$ _____	\$ _____	\$ _____	\$ _____
 Average assets**	 \$ _____	 \$ _____	 \$ _____	 \$ _____

* Itemize any amount that exceeds 10 percent of the total.

**Average assets should be calculated per call report instructions.

Projected Regulatory Capital Schedule

If the application qualifies for streamlined submission, do not submit this schedule.

Capital Components

Tier 1 Capital

Common Stock	_____
Perpetual Preferred Stock	_____
Surplus	_____
Undivided Profits	_____
Other	_____
Total Tier 1 Capital	_____

Tier 2 Capital

Subordinated Debt	_____
Intermediate Term Preferred Stock	_____
Long Term Preferred Stock	_____
Perpetual Preferred Stock (cumulative)	_____
Allowance for Loan and Lease Losses*	_____
Other	_____
Total Tier 2 Capital	_____

Total Tier 1 and Tier 2 Capital _____

Less: Investment in Unconsolidated Subsidiaries _____

Total Capital _____

Capital Ratios

Total Risk-weighted Assets (In millions) _____

Tier 1 Capital to Total Risk-weighted Assets _____

Total Capital to Total Risk-weighted Assets _____

Tier 1 Capital to Average Total Consolidated Assets (Leverage ratio) _____

* Limited to 1.25 percent of total risk weighted assets.

Branches Requiring Authorization

List all branches and other facilities meeting the definition of a branch of the resulting bank that will need authorization when the merger is consummated, i.e., those that are not currently a branch of a national bank. This normally will include all branches of the target(s) when it is not a national bank. It will also include the main office of any merging institution, including a national bank, that will become a branch of the resulting bank. The address should include the street name and number, city, county, state, and ZIP Code. In certain transactions, an acquiring institution may not be permitted to acquire, or may not seek to retain, certain branches of the target institution. If applicable, list those branches of the target national bank that will not be retained by the acquiring institution.

Operating Branches

<u>Popular Name</u>	<u>Address</u>
---------------------	----------------

Unopened Branches

List all approved, but unopened, branches of the target institution(s) that the resulting bank plans to open. The OCC policy for national banks is that branches not opened within 18 months of preliminary approval will require a new application. If not approved by the OCC, copies of both the state and either FDIC or FRB, or OTS if the target is a thrift, as appropriate, approval letters are needed.

Approved, but Unopened Branches

<u>Popular Name</u>	<u>Address</u>	<u>Date(s) Approved</u>
---------------------	----------------	-------------------------

Bank Merger Screen

Part A

A.1. **List areas.** If the offices of both¹ merging institutions² are located in any of the following, list each such area. If none, check the box ☐ and do not complete the merger screen.

- a. Federal Reserve market (contact the relevant Federal Reserve Bank for information on defined markets).
- b. Randomly Metropolitan Area (RMA), if no Federal Reserve market exists.
- c. County, not within any Federal Reserve market or RMA.

<u>Area</u>	<u>Check one:</u>
_____	<input type="checkbox"/> FRB Market <input type="checkbox"/> RMA <input type="checkbox"/> County
_____	<input type="checkbox"/> FRB Market <input type="checkbox"/> RMA <input type="checkbox"/> County
_____	<input type="checkbox"/> FRB Market <input type="checkbox"/> RMA <input type="checkbox"/> County
_____	<input type="checkbox"/> FRB Market <input type="checkbox"/> RMA <input type="checkbox"/> County

A.2. **Calculate HHIs.** For each area listed under item A.1, prepare an HHI worksheet (see next page) covering all banks and thrifts in the area. Follow the instructions accompanying the worksheet (including thrifts at 50 percent as explained in the instructions) to calculate the pre-merger and post-merger HHIs and the HHI increase. Prepare as many worksheets as market areas are listed in Item A.1.

¹This document was written to apply to a situation that involved only two institutions. In a transaction involving more than two institutions, treat each reference to "both" or "two" institutions as if it referred to "two or more" institutions.

²Including their affiliates. All subsequent references to "institutions" include all affiliates.

Instructions for Completing Part A, Sections A.3 - A.5

<u>Item</u>	<u>Instruction</u>
A.3	Prepare a separate HHI worksheet for each market area listed in A.1.
A.5	Calculate an HHI for the market area, as described later.
A.5.a	<p>In column (a), list all of the commercial banks and thrift institutions that have offices in the market area, indicating whether each is a bank or a thrift.</p> <p><i>Affiliates.</i> For institutions affiliated by common control, make only one entry that combines all affiliates.</p>
A.5.b	In column (b), report the number of offices of each institution listed has in the market area.
A.5.c	<p>In column (c), list deposits for each institution.</p> <p><i>For commercial banks,</i> list the total deposits of each institution (including all affiliates) in the market area.</p> <p><i>For thrifts,</i> 100 percent of the deposits of a target thrift (including all affiliates) are included when determining the resulting bank's deposits. List 50 percent of the total deposits of other thrifts (including all affiliates) in the market area.</p> <p><i>Total.</i> Add all of the deposits listed in column (c) (except those in the merged institution) for the total for the market area.</p>
A.5.d	In column (d), calculate the percentage market share of deposits for each institution. Use the total of column (c) as the basis of the calculation.
A.5.e	In column (e), calculate the square of the percentage figures listed in column (d) for the acquiring institution, the acquired institution, and the other institutions. Calculate the Pre-merger HHI by adding all of the figures in column (e).
A.5.f	<p>In column (f), calculate the square of the percentage figure listed in column (d) for the merged institution, and enter the figures from column (e) for the other institutions. Calculate the Post-merger HHI by adding all of the figures in column (f).</p> <p><i>HHI increase.</i> Calculate the HHI increase by subtracting the Pre-merger HHI from the Post-merger HHI.</p>

HHI Worksheet—Market Screen A (continued)

A.3. Market Area: _____

A.4. Source and publication date of data used:

A.5. HHI Calculation

Column (a)	Column (b)	Column (c)	Column (d)	Column (e)	Column (f)
Depository institutions (including affiliates)	Number of offices in market area	Total deposits in market area	Market share of deposits (%)	Share squared pre-merger	Share squared post-merger

Merging Institutions

Acquiring institution	_____	_____	_____	_____	
Acquired institution	_____	_____	_____	_____	
Merged institution	_____	_____	_____		_____
			<i>Merged Share</i>		

Other Institutions

_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total

Pre-merger HHI

Post-merger HHI

HHI Increase

Instructions for Completing Part B, Section B.1

<u>Item</u>	<u>Instruction</u>
B.1	For item B.1, prepare a separate HHI worksheet for each market area in which both institutions have offices that make commercial loans.

Part B

B.1. **List areas.** If offices of both³ merging institutions,⁴ which make commercial loans,⁵ exist in either of the following, list each area.

- a. Ranally Metropolitan Area (RMA).
- b. County, but not within any RMA.

Area

Check one:

☐ RMA ☐ County

☐ RMA ☐ County

☐ RMA ☐ County

☐ RMA ☐ County

B.2. **Calculate HHIs.** For each area listed under item B.1, prepare an HHI worksheet (see next page) covering all commercial banks in the area. Follow the instructions accompanying the worksheet to calculate the Pre-merger and Post-merger HHIs and the HHI increase. Prepare as many worksheets as market areas are listed in Item B.1.

³This document is written for a situation in which only two institutions are involved. In a transaction in which more than two institutions are involved, treat each reference to "both" or "two" institutions as if it referred to "two or more" institutions.

⁴Including their affiliates. All subsequent references to "institutions," include all affiliates.

⁵As defined in the FDIC Report of Condition as "commercial and industrial loans" and in the OTS Thrift Financial Report as "non-mortgage commercial loans."

Instructions for Completing Part B, Section B.3 - B.5

<u>Item</u>	<u>Instruction</u>
B.5	Calculate an HHI for the market area, as described later.
B.5.a	<p>In column (a), list all of the commercial banks (not thrifts) that have offices in the market area. Also list the acquired and acquiring firms, even if both are not commercial banks.</p> <p><i>Affiliates.</i> For institutions affiliated by common control, make only one entry that combines all.</p>
B.5.b	In column (b), report the number of offices of each institution listed in the market area.
B.5.c	<p>In column (c), list the total deposits of each institution (including all affiliates) in the market area.</p> <p><i>Total.</i> Add all of the deposits listed in column (c) (except those in the merged institution) to get the total commercial bank deposits for the market area.</p>
B.5.d	In column (d), calculate the percentage market share of deposits for each institution. Use the total of column (c) as the basis for the calculation.
B.5.e	In column (e), calculate the square of the percentage figures listed in column (d) for the acquired institution, the acquiring institution, and the other institutions. Calculate the Pre-merger HHI by adding all of the figures in column (e).
B.5.f	<p>In column (f), calculate the square of the percentage figure listed in column (d) for the merged institution, and enter the figures from column (e) for the other institutions. Calculate the Post-merger HHI by adding all of the figures in column (f).</p> <p><i>HHI increase.</i> Calculate the HHI increase by subtracting the Pre-merger HHI from the Post-merger HHI.</p>

HHI Worksheet—Market Screen B (continued)

B.3. Market Area: _____

B.4. Source and publication date of data used:

B.5. HHI Calculation

Column (a)	Column (b)	Column (c)	Column (d)	Column (e)	Column (f)
Depository institutions (including affiliates)	Number of offices in market area	Total deposits in market area	Market share of deposits (%)	Share squared pre-merger	Share squared post-merger

Merging Institutions

Acquiring institution	_____	_____	_____	_____	
Acquired institution	_____	_____	_____	_____	
Merged institution	_____	_____	_____		_____

Other Institutions

_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Total

Pre-merger HHI

Post-merger HHI

HHI Increase

Instructions for Completing Part B, Section B.6

<u>Item</u>	<u>Instruction</u>
B.6	In Item B.6, indicate the outstanding balance of commercial loans originated in the market area by the acquiring and the acquired institution. "Commercial loans" are those that fall within the category entitled "commercial and industrial loans" in the FDIC Report of Condition and the category entitled "non-mortgage commercial loans" in the OTS Thrift Financial Report.

HHI Worksheet—Market Screen B (continued)

- B.6 Commercial Loans. For each merging institution, report the outstanding balance of commercial and industrial loans ("C&I loans") originated by offices in the market area.

Application: Interim National Bank Charter

We, the undersigned, having associated ourselves to organize an association for carrying on the business of banking, under the provisions of the United States Code, as amended, do make and execute the following [Organization Certificate](#), [Articles of Association](#), and Oaths of Directors.

Organization Certificate

FIRST. The title of the association shall be _____.

SECOND. The main office of the association shall be located in _____, county of _____, and state of _____, where it shall conduct the general business of banking, or limit such business as may be noted in the association's [Articles of Association](#).

THIRD. The authorized capital stock of this association shall be \$_____, and be divided into ____ shares of \$_____ each.

FOURTH. The name and residence of each shareholder of this association, with the number of shares that will be held by each, are:

<u>Name</u>	<u>Residence</u> <u>(Town or City and State)</u>	<u>Number of Shares</u>
-------------	---	-------------------------

FIFTH. This certificate is made so that we may avail ourselves of the advantages of the aforesaid provisions of the United States Code, as amended.

Articles of Association³⁰

For the purpose of organizing an association to perform any lawful activities of national banks, the undersigned enter into the following [Articles of Association](#):

FIRST. The title and main office location of this association shall be as described in the above [Organization Certificate](#).

SECOND. The business of the association will be limited to participating in a business combination with another financial institution.

THIRD. The board of directors of this association shall consist of the undersigned organizers of this national banking association, who shall own common or

³⁰For transactions in which an interim national bank will be the resulting bank, these sample [Articles of Association](#) should not be used as the resulting bank's articles. The interim national bank should, in those cases, adopt more comprehensive Articles of Association, or the Merger/Consolidation/Purchase and Assumption Agreement should designate that the resulting national bank will adopt a different set of articles of association as part of the transaction and include a copy of the adopted articles as an exhibit to the agreement.

preferred stock of the association or a holding company owning the association with such value and under such terms as required by the United States Code, as amended, and any regulations promulgated thereunder.

FOURTH. The authorized amount of capital stock of this association shall be _____ shares of common stock of the par value of _____ dollars (\$_____) each.

FIFTH. The board of directors shall have the power to make contracts related to the business combination for which this association is organized.

SIXTH. The corporate existence of this association shall continue until termination according to the laws of the United States.

Oaths of Directors

As a director of this national banking association, I will diligently and honestly administer the affairs of this association, and not knowingly violate or willingly permit to be violated any of the provisions of the National Bank Act, and hereby confirm that I own, or will own after the formation of this association, the capital stock required by 12 USC 72 and the regulations promulgated thereunder.

In witness whereof, we have hereunto set our hands this _____ day of _____, 19__.

Print or Type Names

Signatures

Notary's Affirmation

State of _____
County of _____

Subscribed and sworn (affirmed) to before the undersigned, who is not an officer of the above-named bank, this _____ day of _____, 19__.

(Seal of Notary)

Notary Public, _____ County

Commission Expires: _____

Stock Payment Certificate and Oaths of Directors and Officers

The undersigned officers and directors of _____ now organizing under the provisions of the United States Code, as amended, at _____ hereby certify:

1. That all of the association's capital stock has been paid in, as follows:

Capital Stock	\$ _____
Surplus	\$ _____
Total capital funds paid in	\$ _____

2. That all of the provisions of the United States Code, as amended, which must be followed before receiving authority to commence the business of banking, have been complied with.
3. That the names and places of residence of all of the bank's directors and the number of shares of its stock individually owned in good faith by each of them are:

	<u>Name</u>	<u>Residence (Town or City, State)</u>	<u>Amount of Stock Owned</u>
1)	_____	_____	_____
2)	_____	_____	_____
3)	_____	_____	_____
4)	_____	_____	_____
5)	_____	_____	_____

In witness whereof, we have hereunto set our hands this _____ day of _____, 19__.

Print or Type Names

Signatures

Director: _____

Director: _____

Director: _____

Director: _____

Director: _____

Pres./Cashier: _____

Notary's Affirmation

State of _____

County of _____

Subscribed and sworn (affirmed) to before the undersigned, who is not an officer of the above-named bank, this _____ day of _____, 19__.

(Seal of Notary)

Notary Public, _____ County

Commission Expires: _____

Shareholders' Waiver of Notice of Shareholders' Meeting and Written Consent of Business Combination

We, the undersigned shareholder(s) of _____, do hereby waive the requirement of notice of the shareholder meeting called to consider a merger/consolidation of the bank with _____. Additionally, we hereby approve and consent to the merger/consolidation.

(Name of Shareholder)

(Signature)

By _____

Title _____

Notary's Affirmation

Subscribed and sworn (affirmed) to before the undersigned, who is not an officer of the above-named bank, this _____ day of _____, 19__.

(Seal of Notary)

Notary Public, _____ County

Commission Expires: _____

Board of Directors' Waiver of Notice of Board Meeting and Written Consent of Business Combination

We, this undersigned directors of _____, do hereby waive notice of a meeting of the board of directors of the bank, and approve and consent to the merger/consolidation of the bank with _____.

Director

Director

Director

Director

Director

Notary's Affirmation

Subscribed and sworn (affirmed) to before the undersigned, who is not an officer of the above-named bank, this _____ day of _____, 19__.

(Seal of Notary)

Notary Public, _____ County

Commission Expires: _____

Emergency Processing Request

Date

Licensing Manager, District
Comptroller of the Currency
Street Address
City, State, ZIP Code

Dear Licensing Manager:

We are submitting an application to (merge/consolidate/purchase the assets and assume the liabilities) (name and location of target or selling institution) (into/with/by) (name and location of acquiring bank) under the charter of (name of resulting bank) and title of (name of resulting bank) and would like the application to be handled under emergency combination procedures. The financial institution in distress is the (target institution name).

The target institution is a financial institution whose circumstances are sufficiently serious to require swift action.

This request for emergency processing is based on the following circumstances:

(NOTE: Applicant(s) must describe the emergency in detail. Specifically address the distressed institution's capital, earnings, asset quality, liquidity, and management. The description must include details of any regulatory assistance and indicate any other action the institutions contemplate in conjunction with the proposed transaction.)

The target institution was last examined by the (name of applicable regulatory agency) on (date of last examination).

Questions about this request for emergency processing should be directed to (name and title of contact) who can be reached at (mailing address and telephone number).

Sincerely,

) Signature)

Name and Title

Notice of Consummation

Date

Licensing Manager, District
Comptroller of the Currency
Street Address
City, State, ZIP Code

Re: Business Combination, CAIS Control Number

Dear Licensing Manager:

We intend to consummate the referenced (merger, consolidation or purchase and assumption) on (date). *(If applicable)* Enclosed are the secretaries' certificates of board approval and (if shareholder approval is required) secretaries' certificates of shareholder approval of the agreement to (merge, consolidate, or purchase and assume) along with an executed agreement with [Articles of Association](#) for the resulting bank. (If applicable) Also enclosed is evidence of Federal Reserve Board approval of the related holding company application.

(When the resulting bank will have branches that were not previously national bank branches)

Please issue branch authorizations required as a result of the transaction.

(When a national bank is being merged into or consolidated with another national bank)

We will submit the obsolete charter certificate(s) following consummation of the combination.

(When national bank branches will be closed or consolidated as a result of the transaction)

We will also submit branch certifications or authorizations for national bank branches that will be (closed/consolidated) as a result of the transaction.

Sincerely,

) Signature)

Name and Title

Enclosure(s)

Secretaries' certificates of board approval
Secretaries' certificates of shareholder approval of the agreement
Executed agreement with [Articles of Association](#) for the resulting bank
Evidence of Federal Reserve Board approval of the related holding company application

Notice of Shareholders' Meeting to Vote on Combination

(Full corporate name of bank)

Shareholders' Meeting

Notice is hereby given that, pursuant to call of its directors, a special meeting of the shareholders of (exact name of bank) will be held at its banking house at (street address) in the (city, town or village) of (name), state of (name), on (day of week), (date), at (time), to consider and determine by vote whether an agreement to (merge/consolidate) the bank and (exact corporate name of other institution), located in the (city, town or village) of (name), state of (name), under the provisions of the laws of the United States, shall be ratified and confirmed, and to vote upon any other matters incidental to the proposed merger of the two institutions. A copy of the agreement, approved by a majority of the directors of each of the two institutions, providing for the merger, is on file at the institution and may be inspected during business hours.

President or Cashier

[NOTE: This notice must be published on the same date each week for four consecutive weeks in a newspaper of general circulation in the communities in which each institution's main office is located.]

Instructions and Sample Public Notice

The notice should contain the following information:

Names of depository institutions—All notices should be published in the joint names of all depository institutions involved in the transaction. If a bank is operating under more than one name or under a name not substantially similar to its legal name, the public notices should contain both the legal name of the bank and the name(s) the bank uses in the community in which the publication circulates.

Type of transaction—Notices must state whether the application is for a merger, consolidation, or purchase and assumption and whether it involves an interim bank charter application.

- Branch closings—If the proposal involves the closing of a branch office(s), refer to the relevant Interagency Policy Statement and 12 USC 1831r-1 for branch closure and public notice requirements. Notices must state whether any branches of the combining institutions will cease to operate as a result of the transaction. At the time of filing, the applicant may realize that branches will close or consolidate, but be unable to identify the number and location of those closings. In this situation, the notice should state that an as yet undetermined number of offices will cease to operate. Later, when the exact locations are determined, the bank must follow established branch closing procedures.
- Related transactions—If the filer publishes one public notice for multiple transactions, it must explain in the notice how the transactions are related. Although publication requirements under 12 CFR 5.8 normally do not apply to conversions, it is usually appropriate to include charter conversions related to affiliated business combinations in the public notice. Upon request, the OCC may determine that a public notice required by another federal agency satisfies the OCC's public notice requirements. The OCC also may accept publication of a single joint notice containing the information required by both the OCC and the other federal agency.

Sample Notice

(If application is being made for an interim bank charter)

Notice is hereby given that application has been made to the Comptroller of the Currency, (insert address of the appropriate district office) to form

(Exact corporate name of interim national bank)

(city or town) (state) (ZIP)

for the purpose of (describe the purpose of the transaction).

(For all mergers, consolidations, and whole-bank purchase and assumptions)

Notice is (also) hereby given that application has been made to the Comptroller of the Currency, (address of the appropriate district office) for consent to (merge/consolidate/purchase the assets and assume the liabilities of)

(exact corporate name¹ of target institution)

(city or town) (state)

(into/with/by)

(exact corporate name² of bank)

(city or town) (state)

It is contemplated that the main offices and branch offices of the above-named banks will continue to operate, except for: (insert the following, if applicable)

¹If a bank is operating under more than one name or under a name not substantially similar to its legal name, the public notices of any application published in accordance with 12 CFR 5 should contain both the legal name of the bank and that name(s) the bank uses in the community in which the publication circulates.

²Ibid.

- To the extent known at the time of filing, each office's identity and location and the reason it will cease operating (i.e., sold, closed, or consolidated).
- A statement to the effect that an as yet undetermined number of branches will cease operating.

(For a purchase of assets and assumption of liabilities of less than a whole bank)

Identify the branches being purchased or, if the purchase does not involve branches, identify the assets and liabilities being transferred.

(For all combinations)

This notice is published pursuant to 12 USC 1828(c) and 12 CFR 5. This notice will appear three times at approximately two-week intervals over a 30-day period beginning (date) and ending (date).

Any person desiring to comment on this application may do so by submitting written comments within 30 days³ of the date of the first publication of this notice to: Licensing Manager, (insert address of the appropriate district office) or (insert appropriate Internet address). The public file is available for inspection in that office during regular business hours. Written requests for a copy of the public file on the application should be sent to the licensing manager.

_____(date)_____ (name of target institution) _____(location)_____

_____ (name of acquiring bank) _____(location)_____

³The comment period may be reduced to 10 days by the Comptroller of the Currency, if an emergency exists requiring expeditious action under 12 USC 1828(c) (4) and (6).

Secretary's Certificate of Board of Directors' Approval of Combination

(Corporate Resolution)

1. I hereby certify that I am the (secretary or cashier) of _____ located in the city of _____ and state of _____ and that I have been appointed and am presently serving in that capacity in accordance with the Bylaws of the institutions.
2. I further certify that at a meeting of the board of directors of _____ called and convened on the _____ day of _____, 19____, the following resolutions were adopted by a majority of the board.

(Insert resolutions adopted—the entire text should be included.)

The resolution(s) is presently in full force and effect and has not been revoked or rescinded as of this date.

In witness hereof, I have hereupon set the seal of this bank this _____ day of _____, 19____.

(SEAL OF BANK)

Secretary or Cashier

Secretary's Certificate of Shareholders' Approval of Combination

1. I hereby certify that I am the (secretary or cashier) of (name of bank) located in (city/town), state of _____, and that I have been appointed and am presently serving in that capacity in accordance with the Bylaws of the institution.
2. I further certify that at a meeting of shareholders of (name of bank) called on notice as required by law, including publication requirements, and convened on the _____ day of _____, 19 _____, the following resolutions were adopted by the owners of two-thirds of the outstanding stock entitled to vote thereon:

Resolved that the agreement, dated _____ to (merge or consolidate) entered into between the boards of directors of the respective institutions is hereby ratified and confirmed.

The foregoing resolutions are presently in full force and effect and have not been revoked or rescinded as of this date.

In witness hereof, I have hereupon set the seal of this bank this _____ day of _____, 19 _____.

(SEAL OF BANK)

Secretary or Cashier

Preliminary Activity

Licensing Staff

1. Refers a bank that requests instructions to the "[General Policies and Procedures](#)" (GPP) booklet, the "[Public Involvement](#)" booklet, and this booklet of the *Comptroller's Corporate Manual*. Refers the applicant to other booklets as appropriate (e.g., "[Conversions](#)" and "[Management Interlocks](#)"). In addition, arranges for prefiling discussions, if necessary, and invites appropriate legal staff (e.g., legal, supervision, and economics.).

During the prefiling discussions (or if no prefiling discussions, within seven days of receipt of the filing), the licensing staff should inform the applicant of the importance of year 2000 preparedness by:

- Providing the applicant with copies of the OCC's year 2000 guidelines ([AL 97-6](#), [AL 97-10](#), [AL 98-1](#), and any subsequent issuances) and advising the applicant that we will consider compliance with these guidelines.
 - Advising the applicant that the application should sufficiently address systems integration considerations.
2. If any prefiling discussion or meetings reveal significant policy, legal, CRA, consumer compliance, or supervisory issues, immediately contacts Bank Organization and Structure (BOS) to decide:
 - Whether the application should be filed with the Washington office, if broad issues are involved, or
 - If specific issues should be carved out for Washington action, while the application continues to be processed in the appropriate district office.
 - When the filing should be forwarded to Washington.
 3. Prepares memoranda on all prefiling meetings and records pertinent information from telephone calls. Retains memoranda and other information in an official file.

Filing the Application and Publication

Bank

4. Submits a complete application (original and four copies) and filing fee to the licensing manager in the appropriate district office or to BOS. The application can be filed on 3½ inch diskette in a commonly used, word processing software, provided that any original pages requiring signatures also are submitted.
5. Publishes a notice on the filing date or as soon as practicable before or after the date of filing. If not submitted with the filing, submits a copy of the first public notice to the licensing manager in the appropriate district office or BOS. (See the "[Public Involvement](#)" booklet.)

General Review

Licensing Staff

6. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).

7. Establishes the official file to maintain all original documents.

Steps 8-17 apply only when a request for emergency processing is submitted.

8. Notifies BOS if the application contains a request for emergency processing.
9. Makes appropriate CAIS entries and notifies the appropriate assistant deputy comptroller (ADC)/examiner-in-charge (EIC) and/or portfolio manager of the filing.
10. Establishes the official file to maintain all original documents relating to the emergency processing request.
11. Solicits written comments from either:
 - The target's primary supervisory agency, when the target is not a national bank.
 - Appropriate OCC staff.
12. Makes appropriate CAIS entries and forwards the official file to BOS for decision.

BOS

13. Makes appropriate CAIS entries.
14. Reviews the file and all relevant information, solicits comments from other OCC divisions or supervisory agencies as appropriate, makes a recommendation, and forwards the official file to the appropriate official for decision.
15. Once decided, notifies the bank and the appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, advises of any written conditions attached to the decision or other supervisory concerns.
16. Makes appropriate CAIS entries.
17. Returns the official file to the district office.

Licensing Staff

18. If a fee is submitted, forwards it and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60671-7150. Retains a copy of the memorandum. Contacts the applicant if the filing fee is not received or is inaccurate.
19. Reviews the application and any other relevant information about the bank and:
 - Determines if the filing contains all information necessary to reach a decision.
 - Requests additional information from the bank by a specific due date, if the filing does not contain all information necessary to reach a decision.
20. Determines if the business combination qualifies for expedited review and a streamlined application as provided by 12 CFR 5.33(i). (If the determination requires contact with another depository institution's regulatory agency, refer to step 22 for additional information to discuss with that regulatory agency.)
21. Acknowledges filing within five business days of receipt and advises the bank of whether the transaction is eligible for expedited review and the target date for decision. If appropriate, grants preliminary approval for the interim national bank. Also provides the CAIS control number and advises the appropriate ADC of the filing.

22. Within five business days of receipt, notifies the supervisory office of the filing and:
- Solicits comments, requesting response by the 15th day after the filing date.
 - Reviews SMS and solicits comments from the ADC/EIC and/or portfolio manager about the proposed transaction concerning the bank's year 2000 rating, including its level of compliance with the target time frames of AL 97-6.
 - (For any significant business combination) Obtains a conclusion from the ADC/EIC and/or portfolio manager about whether the acquiring national bank has sufficient plans and expertise to carry out the proposed systems integration. If warranted, consults with the BIS cadre or BOS.
 - Requests the ADC/EIC and/or portfolio manager to comment specifically on any related investment in bank premises if the bank's investment would exceed its capital stock or a level previously approved by the OCC, or if it has submitted an application under 12 CFR 5.37.
 - For undercapitalized banks, requests information from the portfolio manager about the relationship of the business combination to the bank's capital plan.
 - Requests Compliance and CRD staff to provide a preliminary response prior to the 15th day after the filing date on:
 - Recommendations, if any, at or subsequent to the most recent CRA examination, made by the OCC to the bank to improve its performance and, if known, the bank's responses thereto.
 - Public comments and community contacts subsequent to the most recent CRA examination.
 - Whether information filed by the bank (e.g., HMDA data) more recently than the current CRA examination reflects any material change in CRA performance.
 - If a target depository institution is supervised by another federal regulatory agency, requests comparable information from that agency about the target's CRA performance.

- If the parties also filed a bank holding company merger application with the FRB, contacts the FRB and asks them to provide the OCC with copies of any public comments they might receive on the bank holding company application.
 - Forwards relevant materials to the Law Department (if a legal issue has been identified or a legal opinion was submitted with the filing) and requests a preliminary response by the 15th day after the filing date about whether a significant legal issue is present.
 - Forwards relevant materials (e.g., name of CD Investment, public welfare purpose and primary beneficiaries, description of covered activities, investment amount being transferred — including capitalization and/or total cost of the project, target area and geographic area — include city, county, and state, as applicable, and the name and phone number of a bank contact person) to the Community Development Division (CDD) (if the application includes community development investments which must be reviewed for compliance with 12 CFR 24 or approved by CDD) and requests a preliminary response by the 30th day after the filing date.
 - Sends a copy of the application to DOJ, the appropriate FRB, FDIC, and, if a thrift is involved, the OTS and requests their comments on the competitive effects of the proposed transaction.
 - Contacts other divisions, as appropriate, with preliminary response requested by the 15th day after the filing date.
 - Contacts the bank regulator of each host state involved to determine if the bank provided them with a copy of the application for Riegle-Neal transactions.
 - Contacts BOS if the proposal will:
 - Have any significant effect on the quality of the human environment.
 - Affect any district, site, building, structure or object listed in, or eligible for listing in the *National Register of Historic Places*.
23. If the Licensing staff determines at any time that the filing presents significant policy, legal, CRA, consumer compliance, or supervisory issues, contacts BOS to decide:

- Whether the application should be forwarded to the Washington office for processing.
 - If specific issues should be carved out for Washinton action, while the application continues to be processed in the appropriate district office.
 - When the filing should be forwarded to Washington.
24. If the Licensing staff, at any time, determines that issues exist that might require removal from expedited review, contacts BOS for guidance. If the application is removed from expedited review, the Licensing staff promptly notifies the applicant orally and in writing and updates CAIS and the file.

Year 2000 and Systems Integration Considerations

25. Takes one of the following actions concerning year 2000 issues:
- Continues to process the application if year 2000 issues do not constitute a significant supervisory concern.
 - Consults with BOS for guidance if year 2000 issues constitute a significant supervisory concern.
26. (For any *significant* business combination application) If the proposed systems integration does not constitute a significant supervisory concern, documents the file and continues processing the application. If they do, consults with BOS for guidance on appropriate follow-up measures.

Riegle-Neal Act Considerations

Licensing Staff

27. For applications subject to the Riegle-Neal Act:
- Considers the most recent written CRA evaluation of the applicant as well as *any* bank that would be an *affiliate* of the resulting bank.
 - Considers the record of compliance of any applicant bank with relevant state community reinvestment laws.
 - Reviews compliance with statutory age limits (i.e., that the bank being acquired has existed for at least the minimum period of time specified in the host state's statutes (up to a maximum of five years).

- Reviews compliance with nationwide and statewide deposit concentration limits.
- Ensures that each bank involved in the combination is capitalized adequately as of the date that the application is filed. In addition, ensures that the resulting bank continues to be capitalized adequately and managed upon consummation of the combination.

Competitive Review

Licensing Staff

28. For combinations between nonaffiliated operating institutions (or between affiliate institutions where the BHC has requested a waiver from the Fed or expects to file a 10-day notice with the Fed), reviews the competitive analysis, and:
 - Verifies the accuracy of the HHI calculations and validates the predefined relevant geographic markets by contacting the appropriate FRB or its Internet sites.
 - Determine if the HHI within any relevant banking market increases by more than 200 with a post-acquisition HHI of at least 1800 or the resulting bank has more than 35 percent of the deposits in a relevant market (excluding any markets in which the acquiring bank has 35 percent or more deposits prior to the merger). If either has occurred, obtains approval of the Licensing Manager to remove the application from expedited review, documents the file, updates CAIS, and promptly notifies the applicant orally and in writing.
 - Forwards the analysis to BOS for special antitrust review, if the combination fails Screen A of the Merger Screen. Also, obtains approval of the Licensing Manager to remove the application from expedited review, documents the file, updates CAIS, and promptly notifies the applicant orally and in writing.
 - Forwards the analysis to BOS for special antitrust review, if the applicant provided an independent competitive analysis.

BOS

28. If the district licensing staff forwarded the competitive analysis to BOS, acknowledges receipt and reviews the competitive effects of the proposed combination, and:

- If warranted (e.g., issues related to defining the relevant market), consults with Bank Activities and Structure (BAS) and Economics.
- Prepares and forwards a memorandum to the district licensing staff on the results of the competitive analysis related to the application.

Steps 29-32 only apply to combinations involving the organization of an interim national bank.

Organizing the Interim Bank

Bank

29. Submits the [Organization Certificate](#), [Articles of Association](#), and Oath of Directors for the interim national bank. (Refers to the "[Business Combination](#)" booklet for the specific procedural steps that apply to interim national banks.)

Licensing Staff

30. Reviews the [Organization Certificate](#), [Articles of Association](#), and Oath of Directors for the interim national bank for accuracy and completeness. If complete, sends acknowledgement to the bank, instructing it to proceed with the interim bank's organization.

Bank

31. Proceeds with the steps required to organize the interim national bank filing the remaining portions of the Application for Interim National Bank in the Documents section of the "[Business Combinations](#)" booklet.

Public Comments and Hearings

Licensing Staff

32. If copies of applications are requested, public comments filed, or hearings requested, refers to the "[Public Involvement](#)" booklet.
33. Forwards comments to appropriate other units for evaluation and advice (e.g., legal issues to legal staff). If a CRA comment is received, promptly notifies BOS.

Decision

34. For applications eligible for expedited review, verifies that no reasons exist to disqualify the application from expedited review after the close of the public comment period, but before expiration of the processing period. Takes one of the following actions:
 - If the application should be removed from expedited review, immediately contacts BOS for guidance.
 - If the application remains eligible for expedited review prepares Confidential Memorandum and decision letter to the delegated official recommending a decision.
35. Decides the application under delegated authority or forwards the official file to the appropriate deciding official, and:
 - If community development investment information was forwarded to the CDD, obtain a decision from CDD and include appropriate information in the decision document.
 - If referred to BOS, goes to step 38.
 - If conditionally approved or denied, forwards a copy of the Confidential Memorandum, decision document, and transmittal letter to the Quality Assurance Coordinator.
 - If the application is denied, goes to step 54.
36. Notifies the bank and, if appropriate, the DOJ and any other interested parties.
37. Notifies the appropriate ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, advises of any written conditions attached to the decision or other supervisory concerns.
38. Sends the bank the decision letter and, for a combination between nonaffiliated institutions, the decision document. If applicable, also sends a [Satisfaction Survey](#).
39. Makes appropriate CAIS entries.

Nondelegated Decision

BOS

40. Makes appropriate CAIS entries.
41. Reviews the files and all relevant information, solicits comments from other OCC divisions or supervisory agencies as appropriate, makes a recommendation, and forwards the official file to the appropriate official for decision.
42. The appropriate official decides the case by taking one of the following actions:
 - If conditionally approved or denied, forwards a copy of the Confidential Memorandum, decision document, and transmittal letter to the Quality Assurance Coordinator. Returns the official file to the district office.
 - If the application is denied, goes to step 54.
43. Notifies the bank, the district, the Securities and Corporate Practices (SCP) Division (if the bank is subject to 12 CFR 11), and the DOJ of the decision.
44. Notifies the ADC/EIC and/or portfolio manager of the decision by forwarding updated CAIS comments and, if warranted, advises of any written conditions attached to the decision or other supervisory concerns.
45. Sends the bank the decision letter and, for a combination between nonaffiliated institutions, the decision document. If applicable, also sends a [Satisfaction Survey](#).
46. Makes appropriate CAIS entries.

Disclosure

Bank

47. If the bank is subject to 12 CFR 11, files preliminary proxy materials or information statements with SCP in Washington.

SCP

48. Reviews proxy materials or information statements and, if warranted, does not object to distribution to the shareholders.

Shareholder Approval

Bank

49. Publishes notice of shareholders' meeting.
50. Mails notice of shareholders' meeting, with accompanying proxy materials or information statements, to all shareholders by certified or registered mail at least 10 days prior to the meeting, or earlier, if required. Also sends definitive copies of the shareholders' materials to the licensing manager.
51. Mails proxy materials or information statements to the appropriate district office.
52. Obtains shareholders' approval of the business combination.

Consummation

Bank

53. Notifies the licensing manager of the planned consummation date of the combination at least 10 days in advance (five days in advance for a combination processed under emergency procedures). If not previously done, submits the Secretaries' Certificates of the board of directors' approval, the executed agreement with the [Articles of Association](#) for the resulting bank, and, if applicable, the Secretaries' Certificates of shareholders' ratification.

Licensing Staff

54. Reviews the bank's notice and determines that all required actions have been completed. Reviews final proxy materials to make sure no significant inconsistencies exist between the proxy materials and the application. Notifies the applicant by telephone of any problems.
55. Prepares and mails the certification letter and, if applicable, the interim national bank charter certificate to the resulting bank. Includes appropriate branch and fiduciary powers authorizations and certification

of an increase in capital, if applicable, in the certification letter. Mails the certification letter following consummation of the combination.

56. Makes appropriate CAIS entries.

Close Out

BOS

57. Reviews the file for completeness, separates documents in accordance with instructions, and sends the official file and documents to Central Records.
58. Makes appropriate CAIS entries.
59. Notifies the appropriate ADC/EIC and/or portfolio manager of the opening date by forwarding updated CAIS comments and, if warranted, other materials.
60. Mails a [Satisfaction Survey](#) to the applicant.

Post Consummation

Bank

61. Files a list of directors and directors' oaths for all new directors who have not previously taken the oath.
62. Surrenders any national bank charter certificates that are no longer valid.
63. Surrenders any branch certificates or authorizations for national bank branches to be closed as a result of the transaction.

Dissenters' Rights

Bank/Dissenters

64. Submits a request for a stock appraisal directly to BOS in accordance with 12 USC 214, 215, or 215a.

BOS

65. Processes the request for a stock appraisal.

Accounting

Accounting Issuances

Accounting Principles Board Opinion No. 16 and 17; AICPA Accounting Interpretation No. 39; Statement of Financial Accounting Standards No. 72
OCC Banking Circular 240 and OCC Bulletin 94-23

Issuances

Authorization to Commence Banking Business

Laws

12 USC 26 and 27

Bank and Thrift Combinations

Laws

12 USC 215c, 1467(a)(5), 1815(d)(3), 1828(c), 1831u, 1842(d)

Regulation

12 CFR 5.33

Branch and Subsidiary Authorization

Laws

12 USC 24(7), 36

Regulations

12 CFR 5.30, 5.31, 5.33, 5.34

Branch Closings

Law

12 USC 1831r-1

Business Combinations

Laws

12 USC 24(7), 215, 215a, 215c, 1828(c)

Regulation

12 CFR 5.33

Capital Requirements

Law

12 USC 51

Regulations

12 CFR 5.20, 5.33

Capital Stock

Laws

12 USC 51, 51c, 52, 53, 55

Capital Structure Change

Regulation

12 CFR 5.46

Certificate Authorizing Transaction of Banking Business

Laws

12 USC 27, 1814

Community Reinvestment Act of 1977

Law

12 USC 2901

Regulation

12 CFR 25

Competitive Analysis

Law	12 USC 1828(c)(4)
Regulation	12 CFR 5.33(e)(1)(i)

Consolidation

Laws	12 USC 215, 1828(c)
Regulation	12 CFR 5.33

Depository Institutions Management Interlocks Act

Law	12 USC 3201
Regulation	12 CFR 26

De Minimis Market Test

OCC Decision	April 8, 1983 Application to merge The National Bank and Trust Company of Norwich, Norwich, New York, with National Bank of Oxford, Oxford, New York
--------------	--

Directors

Laws	12 USC 71 - 78
<i>Engaged in Underwriting</i>	
Law	12 USC 78
<i>Number of</i>	
Law	12 USC 71a
<i>Oath of</i>	
Law	12 USC 73
<i>President as</i>	
Law	12 USC 76
<i>Purchases and Sales by</i>	
Law	12 USC 375
<i>Qualification of</i>	
Law	12 USC 72
Regulation	12 CFR 7.2005

Examination of National Banks

Law	12 USC 481
-----	------------

Filing Fees

Regulation	12 CFR 5.5
------------	------------

Fiduciary Powers

Law	12 USC 92a
Regulation	12 CFR 5.26
Issuance	Interpretive Letter 695, December 8, 1995

Interstate Combinations	
Laws	12 USC 24(Seventh), 30, 35, 36, 215, 215a, 215a-1, 215c, 1815(d)(3), 1828(c), 1831o(b)(1)(B), 1831u, 1835a, 1842
Regulations	12 CFR 5.33, 6
Intrastate Combinations	
Laws	12 USC 24 (Seventh), 181, 215, 215a, 215c, 1828(c)
Regulation	12 CFR 5.33
Investment in Bank Premises	
Law	12 USC 371d
Regulations	12 CFR 5.37, 7.1000
Legal Lending Limit Calculation	
Law	12 USC 1831o
Regulations	12 CFR 6, 32
Liquidation	
Laws	12 USC 181, 182
Regulation	12 CFR 5.48
Merger	
Laws	12 USC 215, 215a, 1828(c)
Regulation	12 CFR 5.33
Meetings and Hearings	
Regulations	12 CFR 5.8, 5.10, 5.11, 5.13.
Place of Business	
Law	12 USC 81
Proxy or Information Statement	
Law	15 USC 78
Regulations	12 CFR 5.33, 11
Publication of Application	
Law	12 USC 1828(c)
Regulations	12 CFR 5.33, 5.8
Purchase and Assumption	
Laws	12 USC 24(7), 1828(c)
Regulation	12 CFR 5.33

Restrictions on Transactions with Affiliates

Laws	12 USC 36, 371c (Section 23A), 371c-1 (Section 23B), 1841
Regulation	12 CFR 34
Issuances	Interpretive Letter No. 667, October 10, 1994; OCC Conditional Approval Letter No. 202, April 25, 1996.

Savings Associations

Laws	12 USC 215c, 1828(c), 1815(d)(3)
------	----------------------------------

Shareholders' List

Law	12 USC 62
-----	-----------

Systems Integration

Advisory Letter	OCC AL 98-1
-----------------	-----------------------------

Year 2000 Issues

Advisory Letters	OCC AL 97-6 , 97-10 , 98-1 , 98-3
------------------	---

[Letter to CEO of National Banks and Bank Vendor Companies on year 2000, dated September 30, 1997](#)

Sample Agreements — Consolidation

(This sample agreement may include information not applicable to transactions involving interim national banks.)

Agreement To Consolidate

between

and

under the charter of

under the title of

This agreement made between _____ (hereinafter referred to as "_____
_"), a banking association organized under the laws of the United States,
being located at _____, county of _____, in the state of _____
_____, with a capital of \$_____, divided into _____ shares of common stock,
each of \$_____, surplus of \$_____, and undivided profits, including
capital reserves, of \$_____, as of _____, 19____, and _____
(hereinafter referred to as "_____
_"), a banking association organized
under the laws of the _____, being located at _____,
county of _____, in the state of _____, with a capital of
\$_____, divided into _____ shares of common stock, each of \$_____,
surplus of \$_____, and undivided profits, including capital reserves, of \$_____
_____, as of _____, 19____, each acting pursuant to a resolution of its board
of directors, adopted by the vote of a majority of its directors, pursuant to the
authority given by and in accordance with the provisions of the Act of
November 7, 1918, as amended (12 USC 215), witnessed as follows:

Section 1.

_____ and _____ (hereinafter referred to as the "consolidating banks") shall be consolidated under the charter of _____.

Section 2.

The name of the consolidated association (hereinafter referred to as the "association") shall be _____.

Section 3.

The business of the association shall be that of a national banking association. This business shall be conducted by the association at its main office which shall be located at _____, and at its legally established branches.

Section 4.

The amount of capital stock of the association shall be \$ _____, divided into _____ shares of common stock, each of \$ _____ par value, and at the time the consolidation shall become effective, the association shall have a surplus of \$ _____, and undivided profits, including capital reserves, which when combined with the capital and surplus will be equal to the combined capital structures of the consolidating banks as stated in the preamble of this agreement, adjusted however, for normal earnings and expenses (and if applicable, purchase accounting adjustments) between _____, 19____, and the effective time of the consolidation.

(If a partial or full cash payout or cash dividend payment will be made to shareholders as a consideration to the proposed consolidation, then add at the close of the foregoing "and, for cash payment of \$ _____ as set forth under Section 7 and/or Section 8 of this agreement.")

Section 5.

All assets of each of the consolidating banks, as they exist at the effective time of the consolidation shall pass to and vest in the association without any conveyance or other transfer. The association shall be responsible for all of the liabilities of every kind and description, including liabilities arising from the operation of a trust department, of each of the consolidating banks existing as of the effective time of the consolidation.

The assets contributed by the consolidating banks shall, at the effective time of the consolidation, have been passed upon and acceptable to a committee of _____, three to be appointed by the board of directors of each bank.

As its contribution to the capital structure of the _____ association, _____ shall contribute to the association acceptable assets having a book value, over and above its liability to its creditors, of at least \$ _____, and having an estimated fair value over and above its liability to its creditors, of at least \$ _____, or _____ % of the aggregate estimated fair value of excess acceptable assets being contributed by the consolidating banks to the association, adjusted, however, for normal earnings and expenses between _____, 19 __, and the effective time of the consolidation, and, for allowance of cash payments, if any, permitted under this agreement. The difference between the book value and the estimated fair value of the assets to be contributed is made up as follows:

(List the main items and dollar amounts that make up the difference.)

As its contribution to the capital of the association, _____ shall contribute acceptable assets having a book value, over and above its liability to its creditors, of at least \$ _____, and having an estimated fair value, over and above its liability to its creditors, of at least \$ _____, or _____ % of the estimated fair value of excess acceptable assets, being contributed by the consolidating banks to the association, adjusted, however, for normal earnings and expenses between _____, 19 __, and the effective time of the consolidation, and for allowances of cash payments, if any, permitted under this agreement. The difference between the book value and the estimated fair value of the assets to be contributed is made up as follows:

(List the main items and dollar amounts that make up the difference.)

Section 6.

Of the capital stock of the association, the shareholders of _____ shall be entitled to receive _____ shares, being _____ shares, each of \$ _____ par value, for each share of \$ _____ par value now held by them, being _____ % of the total number of shares of capital stock of the association; and the shareholders of _____ shall be entitled to receive _____ shares, being _____ shares, each of \$ _____ par value, for each share of \$ _____ par value now held by them, being _____ % of the total number of shares of capital stock of the association.

(If a cash payment will be made to the shareholders of one of the consolidating banks, this section should be amended accordingly.)

(If the association desires to avoid the issuance of fractional shares that result from the allocation of stock, the following provision may be part of the agreement.)

No fractional shares shall be issued. Each shareholder entitled to a fractional share shall receive a scrip certificate, expiring as of a fixed date, in such form as the directors may determine, evidencing the right to such fractional share or the right to receive cash in lieu of such fractional share, and full shares shall be issued as provided in this agreement in exchange for the surrender of such scrip certificates aggregating a full share or shares.

The association shall enter into an agreement with a named trustee and will issue to such trustee a stock certificate covering the aggregate of the fractional shares represented by the transferable scrip certificates issued and outstanding. Such agreement shall provide that during the life of the scrip certificates any individual acquiring a sufficient amount of fractions to equal one or more whole shares may exchange same through the trustee, for stock certificates representing whole shares; that after (insert date) the expiration date of such scrip certificates, that portion of stock remaining in the hands of the trustee will be disposed of by him/her under sealed bid, following appropriate public notice, or at public auction, to the highest bidder, or in such manner as may be determined by the board of directors of the association, but as not less than the market value on the date of sale; that the proceeds of such sale shall then be distributed pro rata to the holders of scrip certificates outstanding and not presented for exchange, upon surrender.

Section 7.

Neither of the consolidating banks shall declare nor pay any dividend to its shareholders between the date of the agreement and the time at which the consolidation shall become effective, nor dispose of any of its assets in any other manner, except in the normal course of business and for adequate value.

(Note any exception in detail.)

Section 8.

The following named persons shall constitute the original board of directors of the association, until the next annual meeting of its shareholders or until such time as their successors have been elected and qualify:

(Insert names of directors.)

Section 9.

Effective as of the time this consolidation shall become effective as specified in the approval to be issued by the Comptroller of the Currency, the [Articles of Association](#) of the consolidated bank shall read in their entirety as follows:

(Insert [Articles of Association](#).)

Section 10.

This agreement may be terminated by the unilateral action of the board of directors of any participant prior to the approval of the stockholders of the participant or by the mutual consent of the board of all participants after any shareholder group has taken affirmative action. Since time is of the essence to this agreement, if for any reason the transaction shall not have been consummated by _____, this agreement shall terminate automatically as of that date unless extended, in writing, prior to that date by mutual action of the boards of directors of the participants.

Section 11.

This agreement shall be ratified and confirmed by the affirmative vote of shareholders of each of the consolidating banks owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors; and the consolidation shall become effective at the time specified in an approval of consolidation issued by the Comptroller of the Currency of the United States. (If one of the consolidating banks is a state bank and the laws of the state require a larger affirmative vote for ratification, such larger vote shall be obtained.)

WITNESS, the signatures and seals of the consolidating banks this _____ day of _____, 19 ____, each set by its president or a vice president and attested to by its cashier or _____, pursuant to a resolution of its board of directors, acting by a majority.

Attest: _____
(name of national bank)

By _____
President

Cashier

Attest: _____
(name of bank)

By _____
President

Cashier

STATE OF _____)
)ss:
 COUNTY OF _____)

Sample Agreements — Merger

(This sample agreement may not be applicable entirely to transactions involving interim national banks.)

Agreement To Merge

between

and

under the charter of

under the title of

This agreement made between _____(hereinafter referred to as "_____"), a banking association organized under the laws of the United States, being located at _____, county of _____, in the state of _____, with a capital of \$_____, divided into _____ shares of common stock, each of \$_____, surplus of \$_____, and undivided profits, including capital reserves, of \$_____, as of _____, 19____, and _____ (hereinafter referred to as "_____"), a banking association organized under the laws of the _____, being located at _____, county of _____, in the state of _____, with a capital of \$_____, divided into _____ shares of common stock, each of \$_____, surplus of \$_____, and undivided profits, including capital reserves, of \$_____, as of _____, 19____, each acting pursuant to a resolution of its board of directors, adopted by the vote of a majority of its directors, pursuant to the authority given by and in accordance with the provisions of the Act of November 7, 1918, as amended (12 USC 215a), witnessed as follows:

Section 1.

_____ shall be merged into _____ under the charter of the latter.

Section 2.

The name of the receiving association (hereinafter referred to as the "association") shall be _____.

Section 3.

The business of the association shall be that of a national banking association. This business shall be conducted by the association at its main office to be located at _____, and at its legally established branches.

Section 4.

The amount of capital stock of the association shall be \$ _____, divided into _____ shares of common stock, each of \$ _____ par value, and at the time the merger shall become effective, the association shall have a surplus of \$ _____, and undivided profits, including capital reserves, which when combined with the capital and surplus will be equal to the combined capital structures of the merging banks as stated in the preamble of this agreement, adjusted however, for normal earnings and expenses (and if applicable, purchase accounting adjustments) between _____, 19____, and the effective time of the merger.

(If be a partial or full cash payout or cash dividend payment will be made to shareholders as a consideration to the proposed merger, add at the close of the foregoing provision—"and, for cash payment of \$ _____ as set forth under Section 7 and/or Section 8 of this agreement.")

Section 5.

All assets as they exist at the effective time of the merger shall pass to and vest in the association without any conveyance or other transfer. The association shall be responsible for all of the liabilities of every kind and description, including liabilities arising from the operation of a trust department, of each of the merging banks existing as of the effective time of the merger. A committee of _____, three to be appointed by the board of directors of each bank at the time of the merger shall have satisfied themselves, that the statement of condition of each bank as of _____, fairly presents its financial condition and since such date there has been no material adverse change in the financial condition or business of either bank.

Section 6.

_____ shall contribute to the association acceptable assets having a book value, over and above its liability to its creditors, of at least \$ _____, and having an estimated fair value over and above its liability to its creditors, of at

least \$ _____, or ____ % of the estimated fair value of excess acceptable assets over and above liabilities to creditors, to the association, adjusted, however, for normal earnings and expenses between _____, 19____, and the effective time of the merger, for allowances of cash payments, if any, permitted under this agreement.

The difference between the book value and the estimated fair value of the assets to be contributed is made up as follows:

(List the main items and dollar amounts that make up the difference.)

At the effective time of the merger, _____ shall have on hand acceptable assets having book value of at least \$ _____ over and above its liabilities to its creditors, and having a fair value, over and above its liability to its creditors, of at least \$ _____, or _____% of the estimated fair value of excess acceptable assets, over and above its liabilities to its creditors, of the association, adjusted, however, for normal earnings and expenses between _____, 19 ____, and the effective time of the merger, and for allowances of cash payments, if any, permitted under this agreement.

The difference between the book and fair value of excess acceptable assets, as set forth above, is made up as follows:

(List the main items and dollar amounts that make up the difference.)

Section 7.

Of the capital stock of the association, the presently outstanding _____ shares of common stock _____ each of \$ _____ par value, and the holders of it shall retain their present rights, and the shareholders of _____ in exchange for the excess acceptable assets contributed by their bank to the association shall be entitled to receive _____ shares of common stock of the association, each of \$ _____ par value, being ____% of the total outstanding common stock of the association, to be distributed on the basis of _____ shares, each of \$ _____ par value, for each share of common stock of _____, each of \$ _____ par value, now held by them.

(If a partial cash payout will be made to shareholders as a consideration to the proposed merger, the foregoing provision should be revised accordingly.)

(If fractional shares will result from the allocation of stock of the association, and the association desires to avoid the issuance of fractional shares, the following provision may be made a part of the agreement.)

No fractional shares shall be issued, but each shareholder entitled to a fractional share shall receive a scrip certificate, expiring as of a fixed date, in such form as the directors may determine, evidencing the right to such

fractional share, or the right to receive cash in lieu of such fractional share, and full shares shall be issued as provided in this agreement in exchange for the surrender of such scrip certificates aggregating a full share or shares.

The association shall enter into an agreement with a named trustee and will issue to such trustee a stock certificate covering the aggregate of the fractional shares represented by the transferable scrip certificates issued and outstanding. Such agreement shall provide that during the life of the scrip certificates any individual acquiring a sufficient amount of fractions to equal one or more whole shares may exchange same through the trustee, for stock certificates representing whole shares; that after (insert date) the expiration date of such scrip certificates, that portion of stock remaining in the hands of the trustee will be disposed of by him/her under sealed bid, following appropriate public notice, or at public auction, to the highest bidder, or in such manner as may be determined by the board of directors of the association, but as not less than the market value on the date of sale; that the proceeds of such sale shall then be distributed pro rata to the holders of scrip certificates outstanding and not presented for exchange, upon its surrender.

Section 8.

Neither of the banks shall declare nor pay any dividend to its shareholders between the date of the agreement and the time at which the merger shall become effective, nor dispose of any of its assets in any other manner, except in the normal course of business and for adequate value.

(Note any exception in detail.)

Section 9.

The present board of directors of _____ shall continue to serve as the board of directors of the association until the next annual meeting or until such time as their successors have been elected and have qualified.

(If any such additions or changes will be made in the present directorate, the provisions should be revised to read:)

The following named persons shall serve as the board of directors of the association to serve until the next annual meeting of its shareholders or until such time as their successors have been elected and qualified:

(Insert the names of directors.)

Section 10.

Effective as of the time this merger shall become effective as specified in the merger approval to be issued by the Comptroller of the Currency, the Articles of Association of the resulting bank shall read in their entirety as follows:

(Attach Articles of Association of resulting bank.)

Section 11.

This agreement may be terminated by the unilateral action of the board of directors of any participant prior to the approval of the stockholders of the participant or by the mutual consent of the board of all participants after any shareholder group has taken affirmative action. Since time is of the essence to this agreement, if for any reason the transaction shall not have been consummated by _____, this agreement shall terminate automatically as of that date unless extended, in writing, prior to this date by mutual action of the boards of directors of the participants.

Section 12.

This agreement shall be ratified and confirmed by the affirmative vote of shareholders of each of the merging banks owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors; and the merger shall become effective at the time specified in a merger approval to be issued by the Comptroller of the Currency of the United States. (If one of the merging banks is a state bank and the laws of the state require a larger affirmative vote for ratification, such larger vote shall be obtained.)

WITNESS, the signatures and seals of the merging banks this _____ day of _____, 19 ____, each set by its president or a vice president and attested to by its cashier or _____, pursuant to a resolution of its board of directors, acting by a majority.

Attest:

(name of national bank)

By _____
President

Cashier

STATE OF _____)
COUNTY OF _____)ss:

On this _____ day of _____, 19 ____,
before me, a notary public for this state and county, personally came _____,
as president, and _____ as _____, of _____,
and each in his/her capacity acknowledged this instrument to be the act and
deed of the association.

WITNESS my official seal and signature this day and year.

(Seal of Notary)

Notary Public, _____ County.
My commission expires _____

Sample Agreement — Purchase and Assumption

(This sample agreement may not be entirely applicable to transactions involving interim national banks or to partial purchase and assumption transactions.)

Agreement To Purchase the Assets and Assume the Liabilities

Made and entered into this _____ day of _____, 19__, by and between _____, a (national) banking association organized and existing under the laws of the United States, having its principal office and place of business in the city of _____, state of _____, (hereinafter called "seller"), and _____, a national banking association organized and existing under the laws of the United States, having its principal office and place of business in the city of _____, state of _____, (hereinafter called "purchaser").

WHEREAS, seller intends to cease the transaction of the business for which it was organized and thereafter proceed with the voluntary liquidation of its assets, and dissolution; and

WHEREAS, upon obtaining the requisite approval to this contemplated action by the shareholders of seller, seller will dispose of all of its assets and will provide for the payment of all of its outstanding obligations and liabilities and will distribute the overplus to its shareholders; and

WHEREAS, purchaser is willing to enter into an agreement with seller to assume and agree to pay and discharge the deposit and all of the other obligations and liabilities of seller (other than its liability to its shareholders as such) and to purchase all of the assets of the seller for a price which will give to each shareholder of seller \$_____ for each share held.

FIRST: On the closing date, purchaser assumes, and agrees to pay discharge as and when due and payable, the deposits and all other liabilities and obligations of seller as such liabilities and obligations may exist (other than its liability to its shareholders as such).

SECOND: On the closing date, seller agrees to sell and transfer and purchaser agrees to purchase, all of the assets of seller of every kind and nature whatsoever, real, personal or mixed, tangible or intangible, for a total price equal to the amount of the deposit and other liabilities and obligations of seller assumed by purchaser, plus \$_____.

The purchase price to be paid by purchaser for the respective assets shall be determined in the manner set forth in Exhibit A, attached, and made part of this agreement.

THIRD: On the closing date, purchaser will pay the purchase price of the assets of seller to be purchased by it by offsetting against such purchase price the total amount of deposit and other obligations and liabilities of seller assumed by it, and by paying the balance of \$_____ in cash or by cashier's check of purchaser.

FOURTH: On the closing date the seller will:

1. Deliver to purchaser the assets purchased as shall be capable of physical delivery.
2. Execute, acknowledge and deliver to purchaser all such endorsements, assignments, bills of sale, deeds and other instruments of conveyance, assignment and transfer as shall be reasonably necessary or advisable, in the opinion of counsel, for purchaser to consummate the sale and transfer the purchased assets to purchaser.
3. If requested by purchaser, assign and deliver by proper endorsement, any and all insurance policies, whether fire, life, fidelity or otherwise, previously taken out by seller for its own protection, so that purchaser, after the closing date, may be protected to the satisfaction of its counsel.
4. Assign and deliver to purchaser all real estate leases in force and all leases and agreements for its safe deposit boxes, which purchaser agrees to take over and perform.
5. Assign and deliver to purchaser all collateral security of any nature whatever held by seller as collateral security for any indebtedness owing to seller.
6. Deliver books, records and accounts, including tax returns which become the property of purchaser, but will be available at all times to the liquidating agents of sellers.

FIFTH: On and after the closing date seller agrees to give such further assurance and to execute, acknowledge and deliver such bills of sale, deeds, acknowledgments and other instruments of conveyance and transfer as in the judgment of purchaser shall be necessary and appropriate to effectively vest in the purchaser the full legal and equitable title of all assets of seller, free and clear of all liens and encumbrances.

SIXTH: Seller warrants, covenants and agrees that its condition as of the close of business of the closing date will not change materially from its

condition as of the date of this agreement and that there are no actions, suits or proceedings pending, or to the knowledge of seller threatened against or affecting seller that involve the likelihood of any judgment of liability that may cause any materially adverse change in the business, properties or assets of seller and that for all mortgages and loans and discounts the amounts due and owing thereon as shown by the books of seller are correct.

SEVENTH: Purchaser agrees to pay for all expenses and costs in connection with the carrying out of this agreement and the liquidation and dissolution of seller, *provided, however*, that all such expenses and costs shall be approved by purchaser prior to their being incurred by seller or by its liquidating committee.

EIGHTH: Seller agrees that immediately after the closing date it will proceed to complete its liquidation by distributing its assets and thereupon dissolve.

NINTH: Seller agrees to enter into an agreement with the liquidating agent or agents, to be elected by the shareholders provided that such liquidating agent or agents shall receive no compensation for their services in liquidating the assets of the seller, distributing such assets to the shareholders, and proceeding to dissolution.

TENTH: The closing date shall be the close of business of the day on which the seller shall cease to do business preparatory to its liquidation and dissolution, such date to be fixed by the shareholders of seller.

ELEVENTH: This agreement is subject to the approval of the Plan of Voluntary Dissolution and Complete Liquidation of seller by a vote of two-thirds of its stockholders, and is further subject to approval by the Comptroller of the Currency and his consent to the establishment and operation by the purchaser of a branch bank at the present location of seller.

TWELFTH: Seller does constitute and appoint its attorney, and purchaser does constitute and appoint its attorney, respectively, to acknowledge this agreement before any officer authorized to take such acknowledgments.

THIRTEENTH: This agreement shall ensure to the benefit of the participating parties, their successors and assigns.

ATTEST BY NATIONAL BANK:

Cashier

President

ATTEST:

President

I hereby certify that on this ____ day of _____, 19__, before me, a notary public in and for the county of _____ in the state of _____, personally came _____, the attorney named in the foregoing agreement and by virtue and in pursuance of the authority therein conferred upon him/her, acknowledged the agreement to be the act and deed of the said _____ and desired that the same might be recorded as such.

(Signature)

(Signature)

(Signature)

Expedited Review and Streamlined Application Eligibility Criteria





